

AN ACT concerning education.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 3. The Illinois Pension Code is amended by changing Section 17-130 as follows:

(40 ILCS 5/17-130) (from Ch. 108 1/2, par. 17-130)

Sec. 17-130. Participants' contributions by payroll deductions.

(a) There shall be deducted from the salary of each teacher 7.50% of his salary for service or disability retirement pension and 0.5% of salary for the annual increase in base pension.

In addition, there shall be deducted from the salary of each teacher 1% of his salary for survivors' and children's pensions.

(b) An Employer and any employer of eligible contributors as defined in Section 17-106 is authorized to make the necessary deductions from the salaries of its teachers. Such amounts shall be included as a part of the Fund. An Employer and any employer of eligible contributors as defined in Section 17-106 shall formulate such rules and regulations as may be necessary to give effect to the provisions of this Section.

(c) All persons employed as teachers shall, by such

employment, accept the provisions of this Article and of Sections 34-83 to 34-85 ~~34-85b~~, inclusive, of "The School Code", approved March 18, 1961, as amended, and thereupon become contributors to the Fund in accordance with the terms thereof. The provisions of this Article and of those Sections shall become a part of the contract of employment.

(d) A person who (i) was a member before July 1, 1998, (ii) retires with more than 34 years of creditable service, and (iii) does not elect to qualify for the augmented rate under Section 17-119.1 shall be entitled, at the time of retirement, to receive a partial refund of contributions made under this Section for service occurring after the later of June 30, 1998 or attainment of 34 years of creditable service, in an amount equal to 1.00% of the salary upon which those contributions were based.

(Source: P.A. 94-1105, eff. 6-1-07.)

Section 5. The School Code is amended by changing Sections 10-22.4, 21-23, 24-11, 24-12, 24-16, 24A-2.5, 24A-5, 34-84, 34-85, and 34-85c and by adding Sections 2-3.153, 10-16a, 24-1.5, and 24-16.5 as follows:

(105 ILCS 5/2-3.153 new)

Sec. 2-3.153. Survey of learning conditions. The State Board of Education shall select for statewide administration an instrument to provide feedback from, at a minimum, students in

grades 6 through 12 and teachers on the instructional environment within a school after giving consideration to the recommendations of the Performance Evaluation Advisory Council made pursuant to subdivision (6) of subsection (a) of Section 24A-20 of this Code. Subject to appropriation to the State Board of Education for the State's cost of development and administration and commencing with the 2012-2013 school year, each school district shall administer, at least biannually, the instrument in every public school attendance center by a date specified by the State Superintendent of Education, and data resulting from the instrument's administration must be provided to the State Board of Education. The survey component that requires completion by the teachers must be administered during teacher meetings or professional development days or at other times that would not interfere with the teachers' regular classroom and direct instructional duties. The State Superintendent, following consultation with teachers, principals, and other appropriate stakeholders, shall publicly report on selected indicators of learning conditions resulting from administration of the instrument at the individual school, district, and State levels and shall identify whether the indicators result from an anonymous administration of the instrument. If in any year the appropriation to the State Board of Education is insufficient for the State's costs associated with statewide administration of the instrument, the State Board of Education shall give priority to districts with

low-performing schools and a representative sample of other districts.

(105 ILCS 5/10-16a new)

Sec. 10-16a. School board member's leadership training.

(a) This Section applies to all school board members serving pursuant to Section 10-10 of this Code who have been elected after the effective date of this amendatory Act of the 97th General Assembly or appointed to fill a vacancy of at least one year's duration after the effective date of this amendatory Act of the 97th General Assembly.

(b) Every voting member of a school board of a school district elected or appointed for a term beginning after the effective date of this amendatory Act of the 97th General Assembly, within a year after the effective date of this amendatory Act of the 97th General Assembly or the first year of his or her first term, shall complete a minimum of 4 hours of professional development leadership training covering topics in education and labor law, financial oversight and accountability, and fiduciary responsibilities of a school board member. The school district shall maintain on its Internet website, if any, the names of all voting members of the school board who have successfully completed the training.

(c) The training on financial oversight, accountability, and fiduciary responsibilities may be provided by an association established under this Code for the purpose of

training school board members or by other qualified providers approved by the State Board of Education, in consultation with an association so established.

(105 ILCS 5/10-22.4) (from Ch. 122, par. 10-22.4)

Sec. 10-22.4. Dismissal of teachers. To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause, to dismiss any teacher on the basis of performance ~~who fails to complete a 1 year remediation plan with a "satisfactory" or better rating~~ and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-16.5 ~~24-15~~, inclusive. Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal. Marriage is not a cause of removal.

(Source: P.A. 85-248.)

(105 ILCS 5/21-23) (from Ch. 122, par. 21-23)

Sec. 21-23. Suspension or revocation of certificate.

(a) The State Superintendent of Education has the exclusive authority, in accordance with this Section and any rules adopted by the State Board of Education, to initiate the suspension of up to 5 calendar years or revocation of any certificate issued pursuant to this Article, including but not

limited to any administrative certificate or endorsement, for abuse or neglect of a child, immorality, a condition of health detrimental to the welfare of pupils, incompetency, unprofessional conduct (which includes the failure to disclose on an employment application any previous conviction for a sex offense, as defined in Section 21-23a of this Code, or any other offense committed in any other state or against the laws of the United States that, if committed in this State, would be punishable as a sex offense, as defined in Section 21-23a of this Code), the neglect of any professional duty, willful failure to report an instance of suspected child abuse or neglect as required by the Abused and Neglected Child Reporting Act, failure to establish satisfactory repayment on an educational loan guaranteed by the Illinois Student Assistance Commission, or other just cause. Unprofessional conduct shall include refusal to attend or participate in, institutes, teachers' meetings, professional readings, or to meet other reasonable requirements of the regional superintendent or State Superintendent of Education. Unprofessional conduct also includes conduct that violates the standards, ethics, or rules applicable to the security, administration, monitoring, or scoring of, or the reporting of scores from, any assessment test or the Prairie State Achievement Examination administered under Section 2-3.64 or that is known or intended to produce or report manipulated or artificial, rather than actual, assessment or achievement results or gains from the

administration of those tests or examinations. It shall also include neglect or unnecessary delay in making of statistical and other reports required by school officers. Incompetency shall include, without limitation, 2 or more school terms of service for which the certificate holder has received an unsatisfactory rating on a performance evaluation conducted pursuant to Article 24A of this Code within a period of 7 school terms of service. In determining whether to initiate action against one or more certificates based on incompetency and the recommended sanction for such action, the State Superintendent shall consider factors that include without limitation all of the following:

(1) Whether the unsatisfactory evaluation ratings occurred prior to the effective date of this amendatory Act of the 97th General Assembly.

(2) Whether the unsatisfactory evaluation ratings occurred prior to or after the implementation date, as defined in Section 24A-2.5 of this Code, of an evaluation system for teachers in a school district.

(3) Whether the evaluator or evaluators who performed an unsatisfactory evaluation met the pre-certification and training requirements set forth in Section 24A-3 of this Code.

(4) The time between the unsatisfactory evaluation ratings.

(5) The quality of the remediation plans associated

with the unsatisfactory evaluation ratings and whether the certificate holder successfully completed the remediation plans.

(6) Whether the unsatisfactory evaluation ratings were related to the same or different assignments performed by the certificate holder.

(7) Whether one or more of the unsatisfactory evaluation ratings occurred in the first year of a teaching or administrative assignment.

When initiating an action against one or more certificates, the State Superintendent may seek required professional development as a sanction in lieu of or in addition to suspension or revocation. Any such required professional development must be at the expense of the certificate holder, who may use, if available and applicable to the requirements established by administrative or court order, training, coursework, or other professional development funds in accordance with the terms of an applicable collective bargaining agreement entered into after the effective date of this amendatory Act of the 97th General Assembly, unless that agreement specifically precludes use of funds for such purpose.

(a-5) The State Superintendent of Education shall, upon receipt of evidence of abuse or neglect of a child, immorality, a condition of health detrimental to the welfare of pupils, incompetency (subject to subsection (a) of this Section), unprofessional conduct, the neglect of any professional duty or

other just cause, further investigate and, if and as appropriate, serve written notice to the individual and afford the individual opportunity for a hearing prior to suspension, ~~or~~ revocation, or other sanction; provided that the State Superintendent is under no obligation to initiate such an investigation if the Department of Children and Family Services is investigating the same or substantially similar allegations and its child protective service unit has not made its determination as required under Section 7.12 of the Abused and Neglected Child Reporting Act. If the State Superintendent of Education does not receive from an individual a request for a hearing within 10 days after the individual receives notice, the suspension, ~~or~~ revocation, or other sanction shall immediately take effect in accordance with the notice. If a hearing is requested within 10 days of notice of opportunity for hearing, it shall act as a stay of proceedings until the State Teacher Certification Board issues a decision. Any hearing shall take place in the educational service region wherein the educator is or was last employed and in accordance with rules adopted by the State Board of Education, in consultation with the State Teacher Certification Board, which rules shall include without limitation provisions for discovery and the sharing of information between parties prior to the hearing. The standard of proof for any administrative hearing held pursuant to this Section shall be by the preponderance of the evidence. The decision of the State

Teacher Certification Board is a final administrative decision and is subject to judicial review by appeal of either party.

The State Board may refuse to issue or may suspend the certificate of any person who fails to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until such time as the requirements of any such tax Act are satisfied.

The exclusive authority of the State Superintendent of Education to initiate suspension or revocation of a certificate pursuant to this Section does not preclude a regional superintendent of schools from cooperating with the State Superintendent or a State's Attorney with respect to an investigation of alleged misconduct.

(b) (Blank).

(b-5) The State Superintendent of Education or his or her designee may initiate and conduct such investigations as may be reasonably necessary to establish the existence of any alleged misconduct. At any stage of the investigation, the State Superintendent may issue a subpoena requiring the attendance and testimony of a witness, including the certificate holder, and the production of any evidence, including files, records, correspondence, or documents, relating to any matter in question in the investigation. The subpoena shall require a witness to appear at the State Board of Education at a

specified date and time and shall specify any evidence to be produced. The certificate holder is not entitled to be present, but the State Superintendent shall provide the certificate holder with a copy of any recorded testimony prior to a hearing under this Section. Such recorded testimony must not be used as evidence at a hearing, unless the certificate holder has adequate notice of the testimony and the opportunity to cross-examine the witness. Failure of a certificate holder to comply with a duly-issued, investigatory subpoena may be grounds for revocation, suspension, or denial of a certificate.

(b-10) All correspondence, documentation, and other information so received by the regional superintendent of schools, the State Superintendent of Education, the State Board of Education, or the State Teacher Certification Board under this Section is confidential and must not be disclosed to third parties, except (i) as necessary for the State Superintendent of Education or his or her designee to investigate and prosecute pursuant to this Article, (ii) pursuant to a court order, (iii) for disclosure to the certificate holder or his or her representative, or (iv) as otherwise required in this Article and provided that any such information admitted into evidence in a hearing shall be exempt from this confidentiality and non-disclosure requirement.

(c) The State Superintendent of Education or a person designated by him shall have the power to administer oaths to witnesses at any hearing conducted before the State Teacher

Certification Board pursuant to this Section. The State Superintendent of Education or a person designated by him is authorized to subpoena and bring before the State Teacher Certification Board any person in this State and to take testimony either orally or by deposition or by exhibit, with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in the civil cases in circuit courts of this State.

(c-5) Any circuit court, upon the application of the State Superintendent of Education or the certificate holder, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers as part of any investigation or at any hearing the State Teacher Certification Board is authorized to conduct pursuant to this Section, and the court may compel obedience to its orders by proceedings for contempt.

(c-10) The State Board of Education shall receive an annual line item appropriation to cover fees associated with the investigation and prosecution of alleged educator misconduct and hearings related thereto.

(d) As used in this Section, "teacher" means any school district employee regularly required to be certified, as provided in this Article, in order to teach or supervise in the public schools.

(Source: P.A. 96-431, eff. 8-13-09.)

(105 ILCS 5/24-1.5 new)

Sec. 24-1.5. New or vacant teaching positions. A school district's selection of a candidate for a new or vacant teaching position not otherwise required to be filled pursuant to Section 24-12 of this Code must be based upon the consideration of factors that include without limitation certifications, qualifications, merit and ability (including performance evaluations, if available), and relevant experience, provided that the length of continuing service with the school district must not be considered as a factor, unless all other factors are determined by the school district to be equal. A school district's decision to select a particular candidate to fill a new or vacant position is not subject to review under grievance resolution procedures adopted pursuant to subsection (c) of Section 10 of the Illinois Educational Labor Relations Act, provided that, in making such a decision, the district does not fail to adhere to procedural requirements in a collective bargaining agreement relating to the filling of new or vacant teaching positions. Provisions regarding the filling of new and vacant positions in a collective bargaining agreement between a school district and the exclusive bargaining representative of its teachers in existence on the effective date of this amendatory Act of the 97th General Assembly shall remain in full force and effect for the term of the agreement, unless terminated by mutual agreement.

Nothing in this amendatory Act of the 97th General Assembly

(i) limits or otherwise impacts school districts' management right to hire new employees, (ii) affects what currently is or may be a mandatory subject of bargaining under the Illinois Educational Labor Relations Act, or (iii) creates a statutory cause of action for a candidate or a candidate's representative to challenge a school district's selection decision based on the school district's failure to adhere to the requirements of this Section.

(105 ILCS 5/24-11) (from Ch. 122, par. 24-11)

Sec. 24-11. Boards of Education - Boards of School Inspectors - Contractual continued service.

(a) As used in this and the succeeding Sections of this Article:

"Teacher" means any or all school district employees regularly required to be certified under laws relating to the certification of teachers.

"Board" means board of directors, board of education, or board of school inspectors, as the case may be.

"School term" means that portion of the school year, July 1 to the following June 30, when school is in actual session.

"Program" means a program of a special education joint agreement.

"Program of a special education joint agreement" means instructional, consultative, supervisory, administrative, diagnostic, and related services that are managed by a special

educational joint agreement designed to service 2 or more school districts that are members of the joint agreement.

"PERA implementation date" means the implementation date of an evaluation system for teachers as specified by Section 24A-2.5 of this Code for all schools within a school district or all programs of a special education joint agreement.

(b) This Section and Sections 24-12 through 24-16 of this Article apply only to school districts having less than 500,000 inhabitants.

(c) Any teacher who is first employed as a full-time teacher in a school district or program prior to the PERA implementation date and ~~Any teacher who is has been~~ employed in that ~~any~~ district or program ~~as a full-time teacher~~ for a probationary period of 4 ~~2~~ consecutive school terms shall enter upon contractual continued service in the district or in all of the programs that the teacher is legally qualified to hold, unless the teacher is given written notice of dismissal ~~stating the specific reason therefor,~~ by certified mail, return receipt requested, by the employing board at least 45 days before the end of any school term within such period; ~~except that for a teacher who is first employed as a full-time teacher by a school district on or after January 1, 1998 and who has not before that date already entered upon contractual continued service in that district, the probationary period shall be 4 consecutive school terms before the teacher shall enter upon contractual continued service. For the purpose of determining~~

~~contractual continued service, the first probationary year shall be any full-time employment from a date before November 1 through the end of the school year.~~

(d) For any teacher who is first employed as a full-time teacher in a school district or program on or after the PERA implementation date, the probationary period shall be one of the following periods, based upon the teacher's school terms of service and performance, before the teacher shall enter upon contractual continued service in the district or in all of the programs that the teacher is legally qualified to hold, unless the teacher is given written notice of dismissal by certified mail, return receipt requested, by the employing board at least 45 days before the end of any school term within such period:

(1) 4 consecutive school terms of service in which the teacher receives overall annual evaluation ratings of at least "Proficient" in the last school term and at least "Proficient" in either the second or third school term;

(2) 3 consecutive school terms of service in which the teacher receives 3 overall annual evaluations of "Excellent"; or

(3) 2 consecutive school terms of service in which the teacher receives 2 overall annual evaluations of "Excellent" service, but only if the teacher (i) previously attained contractual continued service in a different school district or program in this State, (ii) voluntarily departed or was honorably dismissed from that school

district or program in the school term immediately prior to the teacher's first school term of service applicable to the attainment of contractual continued service under this subdivision (3), and (iii) received, in his or her 2 most recent overall annual or biannual evaluations from the prior school district or program, ratings of "Proficient", with both such ratings occurring after the school district's or program's PERA implementation date.

If the teacher does not receive overall annual evaluations of "Excellent" in the school terms necessary for eligibility to achieve accelerated contractual continued service in subdivisions (2) and (3) of this subsection (d), the teacher shall be eligible for contractual continued service pursuant to subdivision (1) of this subsection (d). If, at the conclusion of 4 consecutive school terms of service that count toward attainment of contractual continued service, the teacher's performance does not qualify the teacher for contractual continued service under subdivision (1) of this subsection (d), then the teacher shall not enter upon contractual continued service and shall be dismissed. If a performance evaluation is not conducted for any school term when such evaluation is required to be conducted under Section 24A-5 of this Code, then the teacher's performance evaluation rating for such school term for purposes of determining the attainment of contractual continued service shall be deemed "Proficient".

(e) For the purposes of determining contractual continued

service, a school term shall be counted only toward attainment of contractual continued service if the teacher actually teaches or is otherwise present and participating in the district's or program's educational program for 120 days or more, provided that the days of leave under the federal Family Medical Leave Act that the teacher is required to take until the end of the school term shall be considered days of teaching or participation in the district's or program's educational program. A school term that is not counted toward attainment of contractual continued service shall not be considered a break in service for purposes of determining whether a teacher has been employed for 4 consecutive school terms, provided that the teacher actually teaches or is otherwise present and participating in the district's or program's educational program in the following school term.

(f) If the employing board determines to dismiss the teacher in the last year of the probationary period as provided in subsection (c) of this Section or subdivision (1) or (2) of subsection (d) of this Section, but not subdivision (3) of subsection (d) of this Section, the written notice of dismissal provided by the employing board must contain specific reasons for dismissal. Any full-time teacher who does not receive written notice from the employing board at least 45 days before the end of any school term as provided in this Section and whose performance does not require dismissal after the fourth probationary year pursuant to subsection (d) of this Section

shall be re-employed for the following school term.

~~If, however, a teacher who was first employed prior to January 1, 1998 has not had one school term of full-time teaching experience before the beginning of a probationary period of 2 consecutive school terms, the employing board may at its option extend the probationary period for one additional school term by giving the teacher written notice by certified mail, return receipt requested, at least 45 days before the end of the second school term of the period of 2 consecutive school terms referred to above. This notice must state the reasons for the one year extension and must outline the corrective actions that the teacher must take to satisfactorily complete probation. The changes made by this amendatory Act of 1998 are declaratory of existing law.~~

~~Any full-time teacher who is not completing the last year of the probationary period described in the preceding paragraph, or any teacher employed on a full time basis not later than January 1 of the school term, shall receive written notice from the employing board at least 45 days before the end of any school term whether or not he will be re-employed for the following school term. If the board fails to give such notice, the employee shall be deemed reemployed, and not later than the close of the then current school term the board shall issue a regular contract to the employee as though the board had reemployed him in the usual manner.~~

(g) Contractual continued service shall continue in effect

the terms and provisions of the contract with the teacher during the last school term of the probationary period, subject to this Act and the lawful regulations of the employing board. This Section and succeeding Sections do not modify any existing power of the board except with respect to the procedure of the discharge of a teacher and reductions in salary as hereinafter provided. Contractual continued service status shall not restrict the power of the board to transfer a teacher to a position which the teacher is qualified to fill or to make such salary adjustments as it deems desirable, but unless reductions in salary are uniform or based upon some reasonable classification, any teacher whose salary is reduced shall be entitled to a notice and a hearing as hereinafter provided in the case of certain dismissals or removals.

(h) If, by reason of any change in the boundaries of school districts or by reason of the creation of a new school district, the position held by any teacher having a contractual continued service status is transferred from one board to the control of a new or different board, then the contractual continued service status of the teacher is not thereby lost, and such new or different board is subject to this Code with respect to the teacher in the same manner as if the teacher were its employee and had been its employee during the time the teacher was actually employed by the board from whose control the position was transferred.

(i) The employment of any teacher in a program of a special

education joint agreement established under Section 3-15.14, 10-22.31 or 10-22.31a shall be governed by ~~under~~ this and succeeding Sections of this Article. For purposes of attaining and maintaining contractual continued service and computing length of continuing service as referred to in this Section and Section 24-12, employment in a special educational joint program shall be deemed a continuation of all previous certificated employment of such teacher for such joint agreement whether the employer of the teacher was the joint agreement, the regional superintendent, or one of the participating districts in the joint agreement.

(j) For any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement, whether the program is operated by the joint agreement or a member district on behalf of the joint agreement, in the event of a reduction in the number of programs or positions in the joint agreement in which the notice of dismissal is provided on or before the end of the 2010-2011 school term, the teacher in contractual continued service is eligible for employment in the joint agreement programs for which the teacher is legally qualified in order of greater length of continuing service in the joint agreement, unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement. For any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement,

whether the program is operated by the joint agreement or a member district on behalf of the joint agreement, in the event of a reduction in the number of programs or positions in the joint agreement in which the notice of dismissal is provided during the 2011-2012 school term or a subsequent school term, the teacher shall be included on the honorable dismissal lists of all joint agreement programs for positions for which the teacher is qualified and is eligible for employment in such programs in accordance with subsections (b) and (c) of Section 24-12 of this Code and the applicable honorable dismissal policies of the joint agreement.

(k) For any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement, whether the program is operated by the joint agreement or a member district on behalf of the joint agreement, in the event of the dissolution of a joint agreement, in which the notice to teachers of the dissolution is provided during the 2010-2011 school term, the teacher in contractual continued service who is legally qualified shall be assigned to any comparable position in a member district currently held by a teacher who has not entered upon contractual continued service or held by a teacher who has entered upon contractual continued service with a shorter length of contractual continued service. Any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement, whether the program is

operated by the joint agreement or a member district on behalf of the joint agreement, in the event of the dissolution of a joint agreement in which the notice to teachers of the dissolution is provided during the 2011-2012 school term or a subsequent school term, the teacher who is qualified shall be included on the order of honorable dismissal lists of each member district and shall be assigned to any comparable position in any such district in accordance with subsections (b) and (c) of Section 24-12 of this Code and the applicable honorable dismissal policies of each member district.

~~Any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement, whether the program is operated by the joint agreement or a member district on behalf of the joint agreement, for a probationary period of two consecutive years shall enter upon contractual continued service in all of the programs conducted by such joint agreement which the teacher is legally qualified to hold; except that for a teacher who is first employed on or after January 1, 1998 in a program of a special education joint agreement and who has not before that date already entered upon contractual continued service in all of the programs conducted by the joint agreement that the teacher is legally qualified to hold, the probationary period shall be 4 consecutive years before the teacher enters upon contractual continued service in all of those programs. In the event of a reduction in the number of programs or positions in the joint agreement, the~~

~~teacher on contractual continued service shall be eligible for employment in the joint agreement programs for which the teacher is legally qualified in order of greater length of continuing service in the joint agreement unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement. In the event of the dissolution of a joint agreement, the teacher on contractual continued service who is legally qualified shall be assigned to any comparable position in a member district currently held by a teacher who has not entered upon contractual continued service or held by a teacher who has entered upon contractual continued service with shorter length of contractual continued service.~~

(1) The governing board of the joint agreement, or the administrative district, if so authorized by the articles of agreement of the joint agreement, rather than the board of education of a school district, may carry out employment and termination actions including dismissals under this Section and Section 24-12.

~~For purposes of this and succeeding Sections of this Article, a program of a special educational joint agreement shall be defined as instructional, consultative, supervisory, administrative, diagnostic, and related services which are managed by the special educational joint agreement designed to service two or more districts which are members of the joint agreement.~~

~~Each joint agreement shall be required to post by February 1, a list of all its employees in order of length of continuing service in the joint agreement, unless an alternative method of determining a sequence of dismissal is established in an applicable collective bargaining agreement.~~

(m) The employment of any teacher in a special education program authorized by Section 14-1.01 through 14-14.01, or a joint educational program established under Section 10-22.31a, shall be under this and the succeeding Sections of this Article, and such employment shall be deemed a continuation of the previous employment of such teacher in any of the participating districts, regardless of the participation of other districts in the program.

(n) Any teacher employed as a full-time teacher in a special education program prior to September 23, 1987 in which 2 or more school districts participate for a probationary period of 2 consecutive years shall enter upon contractual continued service in each of the participating districts, subject to this and the succeeding Sections of this Article, and, notwithstanding Section 24-1.5 of this Code, in the event of the termination of the program shall be eligible for any vacant position in any of such districts for which such teacher is qualified.

(Source: P.A. 90-548, eff. 1-1-98; 90-653, eff. 7-29-98.)

Sec. 24-12. Removal or dismissal of teachers in contractual continued service.

(a) This subsection (a) applies only to honorable dismissals and recalls in which the notice of dismissal is provided on or before the end of the 2010-2011 school term. If a teacher in contractual continued service is removed or dismissed as a result of a decision of the board to decrease the number of teachers employed by the board or to discontinue some particular type of teaching service, written notice shall be mailed to the teacher and also given the teacher either by certified mail, return receipt requested or personal delivery with receipt at least 60 days before the end of the school term, together with a statement of honorable dismissal and the reason therefor, and in all such cases the board shall first remove or dismiss all teachers who have not entered upon contractual continued service before removing or dismissing any teacher who has entered upon contractual continued service and who is legally qualified to hold a position currently held by a teacher who has not entered upon contractual continued service.

As between teachers who have entered upon contractual continued service, the teacher or teachers with the shorter length of continuing service with the district shall be dismissed first unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement or contract between the board and a professional

faculty members' organization and except that this provision shall not impair the operation of any affirmative action program in the district, regardless of whether it exists by operation of law or is conducted on a voluntary basis by the board. Any teacher dismissed as a result of such decrease or discontinuance shall be paid all earned compensation on or before the third business day following the last day of pupil attendance in the regular school term.

If the board has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions thereby becoming available shall be tendered to the teachers so removed or dismissed so far as they are legally qualified to hold such positions; provided, however, that if the number of honorable dismissal notices based on economic necessity exceeds 15% of the number of full time equivalent positions filled by certified employees (excluding principals and administrative personnel) during the preceding school year, then if the board has any vacancies for the following school term or within 2 calendar years from the beginning of the following school term, the positions so becoming available shall be tendered to the teachers who were so notified and removed or dismissed whenever they are legally qualified to hold such positions. Each board shall, in consultation with any exclusive employee representatives, each year establish a list, categorized by positions, showing the length of continuing service of each

teacher who is qualified to hold any such positions, unless an alternative method of determining a sequence of dismissal is established as provided for in this Section, in which case a list shall be made in accordance with the alternative method. Copies of the list shall be distributed to the exclusive employee representative on or before February 1 of each year. Whenever the number of honorable dismissal notices based upon economic necessity exceeds 5, or 150% of the average number of teachers honorably dismissed in the preceding 3 years, whichever is more, then the board also shall hold a public hearing on the question of the dismissals. Following the hearing and board review the action to approve any such reduction shall require a majority vote of the board members.

(b) This subsection (b) applies only to honorable dismissals and recalls in which the notice of dismissal is provided during the 2011-2012 school term or a subsequent school term. If any teacher, whether or not in contractual continued service, is removed or dismissed as a result of a decision of a school board to decrease the number of teachers employed by the board, a decision of a school board to discontinue some particular type of teaching service, or a reduction in the number of programs or positions in a special education joint agreement, then written notice must be mailed to the teacher and also given to the teacher either by certified mail, return receipt requested, or personal delivery with receipt at least 45 days before the end of the school

term, together with a statement of honorable dismissal and the reason therefor, and in all such cases the sequence of dismissal shall occur in accordance with this subsection (b); except that this subsection (b) shall not impair the operation of any affirmative action program in the school district, regardless of whether it exists by operation of law or is conducted on a voluntary basis by the board.

Each teacher must be categorized into one or more positions for which the teacher is qualified to hold, based upon legal qualifications and any other qualifications established in a district or joint agreement job description, on or before the May 10 prior to the school year during which the sequence of dismissal is determined. Within each position and subject to agreements made by the joint committee on honorable dismissals that are authorized by subsection (c) of this Section, the school district or joint agreement must establish 4 groupings of teachers qualified to hold the position as follows:

(1) Grouping one shall consist of each teacher not in contractual continued service who has not received a performance evaluation rating.

(2) Grouping 2 shall consist of each teacher with a Needs Improvement or Unsatisfactory performance evaluation rating on either of the teacher's last 2 performance evaluation ratings.

(3) Grouping 3 shall consist of each teacher with a performance evaluation rating of at least Satisfactory or

Proficient on both of the teacher's last 2 performance evaluation ratings, if 2 ratings are available, or on the teacher's last performance evaluation rating, if only one rating is available, unless the teacher qualifies for placement into grouping 4.

(4) Grouping 4 shall consist of each teacher whose last 2 performance evaluation ratings are Excellent and each teacher with 2 Excellent performance evaluation ratings out of the teacher's last 3 performance evaluation ratings with a third rating of Satisfactory or Proficient.

Among teachers qualified to hold a position, teachers must be dismissed in the order of their groupings, with teachers in grouping one dismissed first and teachers in grouping 4 dismissed last.

Within grouping one, the sequence of dismissal must be at the discretion of the school district or joint agreement. Within grouping 2, the sequence of dismissal must be based upon average performance evaluation ratings, with the teacher or teachers with the lowest average performance evaluation rating dismissed first. A teacher's average performance evaluation rating must be calculated using the average of the teacher's last 2 performance evaluation ratings, if 2 ratings are available, or the teacher's last performance evaluation rating, if only one rating is available, using the following numerical values: 4 for Excellent; 3 for Proficient or Satisfactory; 2 for Needs Improvement; and 1 for

Unsatisfactory. As between or among teachers in grouping 2 with the same average performance evaluation rating and within each of groupings 3 and 4, the teacher or teachers with the shorter length of continuing service with the school district or joint agreement must be dismissed first unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement or contract between the board and a professional faculty members' organization.

Each board, including the governing board of a joint agreement, shall, in consultation with any exclusive employee representatives, each year establish a sequence of honorable dismissal list categorized by positions and the groupings defined in this subsection (b). Copies of the list must be distributed to the exclusive bargaining representative at least 75 days before the end of the school term, provided that the school district or joint agreement may, with notice to any exclusive employee representatives, move teachers from grouping one into another grouping during the period of time from 75 days until 45 days before the end of the school term.

Any teacher dismissed as a result of such decrease or discontinuance must be paid all earned compensation on or before the third business day following the last day of pupil attendance in the regular school term.

If the board or joint agreement has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions thereby

becoming available must be tendered to the teachers so removed or dismissed who were in groupings 3 or 4 of the sequence of dismissal and are qualified to hold the positions, based upon legal qualifications and any other qualifications established in a district or joint agreement job description, on or before the May 10 prior to the date of the positions becoming available, provided that if the number of honorable dismissal notices based on economic necessity exceeds 15% of the number of full-time equivalent positions filled by certified employees (excluding principals and administrative personnel) during the preceding school year, then the recall period is for the following school term or within 2 calendar years from the beginning of the following school term. Among teachers eligible for recall pursuant to the preceding sentence, the order of recall must be in inverse order of dismissal, unless an alternative order of recall is established in a collective bargaining agreement or contract between the board and a professional faculty members' organization. Whenever the number of honorable dismissal notices based upon economic necessity exceeds 5 notices or 150% of the average number of teachers honorably dismissed in the preceding 3 years, whichever is more, then the school board or governing board of a joint agreement, as applicable, shall also hold a public hearing on the question of the dismissals. Following the hearing and board review, the action to approve any such reduction shall require a majority vote of the board members.

For purposes of this subsection (b), subject to agreement on an alternative definition reached by the joint committee described in subsection (c) of this Section, a teacher's performance evaluation rating means the overall performance evaluation rating resulting from an annual or biannual performance evaluation conducted pursuant to Article 24A of this Code by the school district or joint agreement determining the sequence of dismissal, not including any performance evaluation conducted during or at the end of a remediation period. For performance evaluation ratings determined prior to September 1, 2012, any school district or joint agreement with a performance evaluation rating system that does not use either of the rating category systems specified in subsection (d) of Section 24A-5 of this Code for all teachers must establish a basis for assigning each teacher a rating that complies with subsection (d) of Section 24A-5 of this Code for all of the performance evaluation ratings that are to be used to determine the sequence of dismissal. A teacher's grouping and ranking on a sequence of honorable dismissal shall be deemed a part of the teacher's performance evaluation, and that information may be disclosed to the exclusive bargaining representative as part of a sequence of honorable dismissal list, notwithstanding any laws prohibiting disclosure of such information. A performance evaluation rating may be used to determine the sequence of dismissal, notwithstanding the pendency of any grievance resolution or arbitration procedures relating to the

performance evaluation. If a teacher has received at least one performance evaluation rating conducted by the school district or joint agreement determining the sequence of dismissal and a subsequent performance evaluation is not conducted in any school year in which such evaluation is required to be conducted under Section 24A-5 of this Code, the teacher's performance evaluation rating for that school year for purposes of determining the sequence of dismissal is deemed Proficient. If a performance evaluation rating is nullified as the result of an arbitration determination, then the school district or joint agreement is deemed to have conducted a performance evaluation for that school year, but the performance evaluation rating may not be used in determining the sequence of dismissal.

Nothing in this subsection (b) shall be construed as limiting the right of a school board or governing board of a joint agreement to dismiss a teacher not in contractual continued service in accordance with Section 24-11 of this Code.

Any provisions regarding the sequence of honorable dismissals and recall of honorably dismissed teachers in a collective bargaining agreement entered into on or before January 1, 2011 and in effect on the effective date of this amendatory Act of the 97th General Assembly that may conflict with this amendatory Act of the 97th General Assembly shall remain in effect through the expiration of such agreement or

June 30, 2013, whichever is earlier.

(c) Each school district and special education joint agreement must use a joint committee composed of equal representation selected by the school board and its teachers or, if applicable, the exclusive bargaining representative of its teachers, to address the matters described in paragraphs (1) through (5) of this subsection (c) pertaining to honorable dismissals under subsection (b) of this Section.

(1) The joint committee must consider and may agree to criteria for excluding from grouping 2 and placing into grouping 3 a teacher whose last 2 performance evaluations include a Needs Improvement and either a Proficient or Excellent.

(2) The joint committee must consider and may agree to an alternative definition for grouping 4, which definition must take into account prior performance evaluation ratings and may take into account other factors that relate to the school district's or program's educational objectives. An alternative definition for grouping 4 may not permit the inclusion of a teacher in the grouping with a Needs Improvement or Unsatisfactory performance evaluation rating on either of the teacher's last 2 performance evaluation ratings.

(3) The joint committee may agree to including within the definition of a performance evaluation rating a performance evaluation rating administered by a school

district or joint agreement other than the school district or joint agreement determining the sequence of dismissal.

(4) For each school district or joint agreement that administers performance evaluation ratings that are inconsistent with either of the rating category systems specified in subsection (d) of Section 24A-5 of this Code, the school district or joint agreement must consult with the joint committee on the basis for assigning a rating that complies with subsection (d) of Section 24A-5 of this Code to each performance evaluation rating that will be used in a sequence of dismissal.

(5) Upon request by a joint committee member submitted to the employing board by no later than 10 days after the distribution of the sequence of honorable dismissal list, a representative of the employing board shall, within 5 days after the request, provide to members of the joint committee a list showing the most recent and prior performance evaluation ratings of each teacher identified only by length of continuing service in the district or joint agreement and not by name. If, after review of this list, a member of the joint committee has a good faith belief that a disproportionate number of teachers with greater length of continuing service with the district or joint agreement have received a recent performance evaluation rating lower than the prior rating, the member may request that the joint committee review the list to

assess whether such a trend may exist. Following the joint committee's review, but by no later than the end of the applicable school term, the joint committee or any member or members of the joint committee may submit a report of the review to the employing board and exclusive bargaining representative, if any. Nothing in this paragraph (5) shall impact the order of honorable dismissal or a school district's or joint agreement's authority to carry out a dismissal in accordance with subsection (b) of this Section.

Agreement by the joint committee as to a matter requires the majority vote of all committee members, and if the joint committee does not reach agreement on a matter, then the otherwise applicable requirements of subsection (b) of this Section shall apply. Except as explicitly set forth in this subsection (c), a joint committee has no authority to agree to any further modifications to the requirements for honorable dismissals set forth in subsection (a) of this Section. The joint committee must be established and the first meeting of the joint committee must occur on or before December 1, 2011 or 30 days after the effective date of this amendatory Act of the 97th General Assembly, whichever is later.

The joint committee must reach agreement on a matter on or before February 1 of a school year in order for the agreement of the joint committee to apply to the sequence of dismissal determined during that school year. Subject to the February 1

deadline for agreements, the agreement of a joint committee on a matter shall apply to the sequence of dismissal until the agreement is amended or terminated by the joint committee.

(d) Notwithstanding anything to the contrary in this subsection (d), the requirements and dismissal procedures of Section 24-16.5 of this Code shall apply to any dismissal sought under Section 24-16.5 of this Code.

(1) If a dismissal of a teacher in contractual continued service ~~or removal~~ is sought for any ~~other~~ reason or cause other than an honorable dismissal under subsections (a) or (b) of this Section or a dismissal sought under Section 24-16.5 of this Code, including those under Section 10-22.4, the board must first approve a motion containing specific charges by a majority vote of all its members. Written notice of such charges, including a bill of particulars and the teacher's right to request a hearing, must be mailed to the teacher and also given to the teacher either by certified mail, return receipt requested, or personal delivery with receipt ~~shall be served upon the teacher~~ within 5 days of the adoption of the motion. Any written notice sent on or after July 1, 2012 shall inform the teacher of the right to request a hearing before a mutually selected hearing officer, with the cost of the hearing officer split equally between the teacher and the board, or a hearing before a board-selected hearing officer, with the cost of the hearing officer paid

by the board. ~~Such notice shall contain a bill of particulars.~~

Before setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher reasonable warning in writing, stating specifically the causes that, if not removed, may result in charges; however, no such written warning is required if the causes have been the subject of a remediation plan pursuant to Article 24A of this Code.

If, in the opinion of the board, the interests of the school require it, the board may suspend the teacher without pay, pending the hearing, but if the board's dismissal or removal is not sustained, the teacher shall not suffer the loss of any salary or benefits by reason of the suspension.

(2) No hearing upon the charges is required unless the teacher within 17 ~~10~~ days after receiving notice requests in writing of the board that a hearing be scheduled before a mutually selected hearing officer or a hearing officer selected by the board ~~, in which case the board shall schedule a hearing on those charges before a disinterested hearing officer on a date no less than 15 nor more than 30 days after the enactment of the motion.~~ The secretary of the school board shall forward a copy of the notice to the State Board of Education.

(3) Within 5 business days after receiving a this

notice of hearing in which either notice to the teacher was sent before July 1, 2012 or, if the notice was sent on or after July 1, 2012, the teacher has requested a hearing before a mutually selected hearing officer, the State Board of Education shall provide a list of 5 prospective, impartial hearing officers from the master list of qualified, impartial hearing officers maintained by the State Board of Education. Each person on the master list must (i) be accredited by a national arbitration organization and have had a minimum of 5 years of experience directly related to labor and employment relations matters between ~~educational~~ employers and ~~educational~~ employees or their exclusive bargaining representatives and (ii) beginning September 1, 2012, have participated in training provided or approved by the State Board of Education for teacher dismissal hearing officers so that he or she is familiar with issues generally involved in evaluative and non-evaluative dismissals.

If notice to the teacher was sent before July 1, 2012 or, if the notice was sent on or after July 1, 2012, the teacher has requested a hearing before a mutually selected hearing officer, the board ~~. No one on the list may be a resident of the school district. The Board~~ and the teacher or their legal representatives within 3 business days shall alternately strike one name from the list provided by the State Board of Education until only one name remains.

Unless waived by the teacher, the teacher shall have the right to proceed first with the striking. Within 3 business days of receipt of the ~~first~~ list provided by the State Board of Education, the board and the teacher or their legal representatives shall each have the right to reject all prospective hearing officers named on the ~~first~~ list and notify the State Board of Education of such rejection ~~to require the State Board of Education to provide a second list of 5 prospective, impartial hearing officers, none of whom were named on the first list.~~ Within 3 business ~~5~~ days after receiving this notification ~~request for a second list,~~ the State Board of Education shall appoint a qualified person from the master list who did not appear on the list sent to the parties to serve as the hearing officer, unless the parties notify it that they have chosen to alternatively select a hearing officer under paragraph (4) of this subsection (d) ~~provide the second list of 5 prospective, impartial hearing officers.~~ The procedure for selecting a hearing officer from the second list shall be ~~the same as the procedure for the first list.~~

If the teacher has requested a hearing before a hearing officer selected by the board, the board shall select one name from the master list of qualified impartial hearing officers maintained by the State Board of Education within 3 business days after receipt and shall notify the State Board of Education of its selection.

A hearing officer mutually selected by the parties, selected by the board, or selected through an alternative selection process under paragraph (4) of this subsection (d) (A) must not be a resident of the school district, (B) must be available to commence the hearing within 75 days and conclude the hearing within 120 days after being selected as the hearing officer, and (C) must issue a decision as to whether the teacher must be dismissed and give a copy of that decision to both the teacher and the board within 30 days from the conclusion of the hearing or closure of the record, whichever is later.

(4) In the alternative to selecting a hearing officer from the ~~first or second~~ list received from the State Board of Education accepting the appointment of a hearing officer by the State Board of Education or if the State Board of Education cannot provide a list or appoint a hearing officer that meets the foregoing requirements, the board and the teacher or their legal representatives may mutually agree to select an impartial hearing officer who is not on the master a list ~~received from the State Board of Education~~ either by direct appointment by the parties or by using procedures for the appointment of an arbitrator established by the Federal Mediation and Conciliation Service or the American Arbitration Association. The parties shall notify the State Board of Education of their intent to select a hearing officer using an alternative

procedure within 3 business days of receipt of a list of prospective hearing officers provided by the State Board of Education, notice of appointment of a hearing officer by the State Board of Education, or receipt of notice from the State Board of Education that it cannot provide a list that meets the foregoing requirements, whichever is later.

(5) If the notice of dismissal was sent to the teacher before July 1, 2012, the fees and costs for the hearing officer must be paid by the State Board of Education. If the notice of dismissal was sent to the teacher on or after July 1, 2012, the hearing officer's fees and costs must be paid as follows in this paragraph (5). The fees and permissible costs for the hearing officer must be determined by the State Board of Education. If the board and the teacher or their legal representatives mutually agree to select an impartial hearing officer who is not on a list received from the State Board of Education, they may agree to supplement the fees determined by the State Board to the hearing officer, at a rate consistent with the hearing officer's published professional fees. If the hearing officer is mutually selected by the parties, then the board and the teacher or their legal representatives shall each pay 50% of the fees and costs and any supplemental allowance to which they agree. If the hearing officer is selected by the board, then the board shall pay 100% of the hearing officer's fees and costs. The fees and

costs must be paid to the hearing officer within 14 days after the board and the teacher or their legal representatives receive the hearing officer's decision set forth in paragraph (7) of this subsection (d).

(6) The teacher is required to answer the bill of particulars and aver affirmative matters in his or her defense, and the time for initially doing so and the time for updating such answer and defenses after pre-hearing discovery must be set by the hearing officer. Any person selected by the parties under this alternative procedure for the selection of a hearing officer shall not be a resident of the school district and shall have the same qualifications and authority as a hearing officer selected from a list provided by the State Board of Education. The State Board of Education shall promulgate ~~uniform standards and rules~~ so that each party has a fair opportunity to present its case and to ensure that the dismissal process proceeds in a fair and expeditious manner of procedure for such hearings. These rules shall address, without limitation, discovery and hearing scheduling conferences; the teacher's initial answer and affirmative defenses to the bill of particulars and the updating of that information after pre-hearing discovery; provision for written interrogatories and requests for production of documents; the requirement that each party initially disclose to the other party and then update the disclosure

no later than 10 calendar days prior to the commencement of the hearing, the ~~As to prehearing discovery, such rules and regulations shall, at a minimum, allow for: (1) discovery of names and addresses of persons who may be called as expert witnesses at the hearing, a summary of the facts or opinions each witness will testify to, and all other the omission of any such name to result in a preclusion of the testimony of such witness in the absence of a showing of good cause and the express permission of the hearing officer; (2) bills of particulars; (3) written interrogatories; and (4) production of relevant documents and materials, including information maintained electronically, relevant to its own as well as the other party's case (the hearing officer may exclude witnesses and exhibits not identified and shared, except those offered in rebuttal for which the party could not reasonably have anticipated prior to the hearing); pre-hearing discovery and preparation, including provision for written interrogatories and requests for production of documents, provided that discovery depositions are prohibited; the conduct of the hearing; the right of each party to be represented by counsel, the offer of evidence and witnesses and the cross-examination of witnesses; the authority of the hearing officer to issue subpoenas and subpoenas duces tecum, provided that the hearing officer may limit the number of witnesses to be subpoenaed on behalf of each~~

party to no more than 7; the length of post-hearing briefs; and the form, length, and content of hearing officers' decisions. The per diem allowance for the hearing officer shall be determined and paid by the State Board of Education. The hearing officer shall hold a hearing and render a final decision for dismissal pursuant to Article 24A of this Code or shall report to the school board findings of fact and a recommendation as to whether or not the teacher must be dismissed for conduct. The hearing officer shall commence the hearing within 75 days and conclude the hearing within 120 days after being selected as the hearing officer, provided that the hearing officer may modify these timelines upon the showing of good cause or mutual agreement of the parties. Good cause for the purpose of this subsection (d) shall mean the illness or otherwise unavoidable emergency of the teacher, district representative, their legal representatives, the hearing officer, or an essential witness as indicated in each party's pre-hearing submission. In a dismissal hearing pursuant to Article 24A of this Code, the hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to Article 24A that are relevant to the issues in the hearing.

Each party shall have no more than 3 days to present its case, unless extended by the hearing officer to enable a party to present adequate evidence and testimony,

including due to the other party's cross-examination of the party's witnesses, for good cause or by mutual agreement of the parties. The State Board of Education shall define in rules the meaning of "day" for such purposes. ~~The teacher has the privilege of being present at the hearing with counsel and of cross examining witnesses and may offer evidence and witnesses and present defenses to the charges. The hearing officer may issue subpoenas and subpoenas duces tecum requiring the attendance of witnesses and, at the request of the teacher against whom a charge is made or the board, shall issue such subpoenas, but the hearing officer may limit the number of witnesses to be subpoenaed in behalf of the teacher or the board to not more than 10. All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all the testimony. The costs of the reporter's attendance and services at the hearing shall be paid by the party or parties who are responsible for paying the fees and costs of the hearing officer~~ State Board of Education. Either party desiring a transcript of the hearing shall pay for the cost thereof. Any post-hearing briefs must be submitted by the parties by no later than 21 days after a party's receipt of the transcript of the hearing, unless extended by the hearing officer for good

cause or by mutual agreement of the parties.

~~(7) If in the opinion of the board the interests of the school require it, the board may suspend the teacher pending the hearing, but if acquitted the teacher shall not suffer the loss of any salary by reason of the suspension.~~

~~Before setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges; however, no such written warning shall be required if the causes have been the subject of a remediation plan pursuant to Article 24A. The hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to Article 24A. The hearing officer shall, within 30 days from the conclusion of the hearing or closure of the record, whichever is later, make a decision as to whether or not the teacher shall be dismissed pursuant to Article 24A of this Code or report to the school board findings of fact and a recommendation as to whether or not the teacher shall be dismissed for cause and shall give a copy of the decision or findings of fact and recommendation to both the teacher and the school board. If the hearing officer fails to render a decision within 30 days, the State Board of Education shall communicate with the hearing officer to determine the date that the parties can reasonably expect~~

~~to receive the decision. The State Board of Education shall provide copies of all such communications to the parties. In the event the hearing officer fails without good cause to make a decision within the 30 day period, the name of such hearing officer shall be struck for a period of not more than 24 months from the master list of hearing officers maintained by the State Board of Education. If a hearing officer fails without good cause, specifically provided in writing to both parties and the State Board of Education, to render a decision or findings of fact and recommendation within 30 days 3 months after the hearing is concluded or the record is closed, whichever is later, the State Board of Education shall provide the parties with a new list of prospective, impartial hearing officers, with the same qualifications provided herein, one of whom shall be selected, as provided in this Section, to review the record and render a decision. The parties may mutually agree to select a hearing officer pursuant to the alternative procedure, as provided in this Section, to rehear the charges heard by the hearing officer who failed to render a decision or findings of fact and recommendation or to review the record and render a decision. If any the hearing officer fails without good cause, specifically provided in writing to both parties and the State Board of Education, to render a decision or findings of fact and recommendation within 30 days 3 months after the hearing is~~

concluded or the record is closed, whichever is later, the hearing officer shall be removed from the master list of hearing officers maintained by the State Board of Education for not more than 24 months. The parties and the State Board of Education may also take such other actions as it deems appropriate, including recovering, reducing, or withholding any fees paid or to be paid to the hearing officer. If any hearing officer repeats such failure, he or she must be permanently removed from the master list maintained by the State Board of Education and may not be selected by parties through the alternative selection process under this paragraph (7) or paragraph (4) of this subsection (d). The board shall not lose jurisdiction to discharge a teacher if the hearing officer fails to render a decision or findings of fact and recommendation within the time specified in this Section. If the decision of the hearing officer for dismissal pursuant to Article 24A of this Code or of the school board for dismissal for cause is in favor of the teacher, then the hearing officer or school board shall order reinstatement to the same or substantially equivalent position and shall determine the amount for which the school board is liable, including, but not limited to, loss of income and benefits.

(8) The school board, within 45 days after receipt of the hearing officer's findings of fact and recommendation as to whether (i) the conduct at issue occurred, (ii) the

conduct that did occur was remediable, and (iii) the proposed dismissal should be sustained, shall issue a written order as to whether the teacher must be retained or dismissed for cause from its employ. The school board's written order shall incorporate the hearing officer's findings of fact, except that the school board may modify or supplement the findings of fact if, in its opinion, the findings of fact are against the manifest weight of the evidence.

If the school board dismisses the teacher notwithstanding the hearing officer's findings of fact and recommendation, the school board shall make a conclusion in its written order, giving its reasons therefor, and such conclusion and reasons must be included in its written order. The failure of the school board to strictly adhere to the timelines contained in this Section shall not render it without jurisdiction to dismiss the teacher. The school board shall not lose jurisdiction to discharge the teacher for cause if the hearing officer fails to render a recommendation within the time specified in this Section. The decision of the school board is final, unless reviewed as provided in paragraph (9) of this subsection (d).

If the school board retains the teacher, the school board shall enter a written order stating the amount of back pay and lost benefits, less mitigation, to be paid to the teacher, within 45 days after its retention order.

Should the teacher object to the amount of the back pay and lost benefits or amount mitigated, the teacher shall give written objections to the amount within 21 days. If the parties fail to reach resolution within 7 days, the dispute shall be referred to the hearing officer, who shall consider the school board's written order and teacher's written objection and determine the amount to which the school board is liable. The costs of the hearing officer's review and determination must be paid by the board.

(9) The decision of the hearing officer pursuant to Article 24A of this Code or of the school board's decision to dismiss for cause is final unless reviewed as provided in Section 24-16 of this Act. If the school board's decision to dismiss for cause is contrary to the hearing officer's recommendation, the court on review shall give consideration to the school board's decision and its supplemental findings of fact, if applicable, and the hearing officer's findings of fact and recommendation in making its decision. In the event such review is instituted, the school board shall be responsible for ~~any costs of~~ preparing and filing the record of proceedings, and such costs associated therewith must be divided equally between the parties ~~shall be paid by the board.~~

(10) If a decision of the hearing officer for dismissal pursuant to Article 24A of this Code or of the school board for dismissal for cause is adjudicated upon review or

appeal in favor of the teacher, then the trial court shall order reinstatement and shall remand the matter to determine the amount for which the school board with direction for entry of an order setting the amount of back pay, lost benefits, and costs, less mitigation. The teacher may challenge the school board's order setting the amount of back pay, lost benefits, and costs, less mitigation, through an expedited arbitration procedure, with the costs of the arbitrator borne by the school board is liable including but not limited to loss of income and costs incurred therein.

Any teacher who is reinstated by any hearing or adjudication brought under this Section shall be assigned by the board to a position substantially similar to the one which that teacher held prior to that teacher's suspension or dismissal.

(11) The changes made by this amendatory Act of the 97th General Assembly shall apply to dismissals instituted on or after September 1, 2011 or the effective date of this amendatory Act of the 97th General Assembly, whichever is later. Any dismissal instituted prior to the effective date of these changes must be carried out in accordance with the requirements of this Section prior to amendment by this amendatory Act of 97th General Assembly.

~~If, by reason of any change in the boundaries of school districts, or by reason of the creation of a new school~~

~~district, the position held by any teacher having a contractual continued service status is transferred from one board to the control of a new or different board, the contractual continued service status of such teacher is not thereby lost, and such new or different board is subject to this Act with respect to such teacher in the same manner as if such teacher were its employee and had been its employee during the time such teacher was actually employed by the board from whose control the position was transferred.~~

(Source: P.A. 89-618, eff. 8-9-96; 90-224, eff. 7-25-97.)

(105 ILCS 5/24-16) (from Ch. 122, par. 24-16)

Sec. 24-16. Judicial review of administrative decision. The provisions of the Administrative Review Law, and all amendments and modifications thereof and the rules adopted pursuant thereto, shall apply to and govern all proceedings instituted for the judicial review of final administrative decisions of the a hearing officer for dismissals pursuant to Article 24A of this Code or of a school board for dismissal for cause under Section 24-12 of this Article. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(Source: P.A. 82-783.)

(105 ILCS 5/24-16.5 new)

Sec. 24-16.5. Optional alternative evaluative dismissal

process for PERA evaluations.

(a) As used in this Section:

"Applicable hearing requirements" means, for any school district having less than 500,000 inhabitants or a program of a special education joint agreement, those procedures and requirements relating to a teacher's request for a hearing, selection of a hearing officer, pre-hearing and hearing procedures, and post-hearing briefs set forth in paragraphs (1) through (6) of subsection (d) of Section 24-12 of this Code.

"Board" means, for a school district having less than 500,000 inhabitants or a program of a special education joint agreement, the board of directors, board of education, or board of school inspectors, as the case may be. For a school district having 500,000 inhabitants or more, "board" means the Chicago Board of Education.

"Evaluator" means an evaluator, as defined in Section 24A-2.5 of this Code, who has successfully completed the pre-qualification program described in subsection (b) of Section 24A-3 of this Code.

"Hearing procedures" means, for a school district having 500,000 inhabitants or more, those procedures and requirements relating to a teacher's request for a hearing, selection of a hearing officer, pre-hearing and hearing procedures, and post-hearing briefs set forth in paragraphs (1) through (5) of subsection (a) of Section 34-85 of this Code.

"PERA-trained board member" means a member of a board that

has completed a training program on PERA evaluations either administered or approved by the State Board of Education.

"PERA evaluation" means a performance evaluation of a teacher after the implementation date of an evaluation system for teachers, as specified by Section 24A-2.5 of this Code, using a performance evaluation instrument and process that meets the minimum requirements for teacher evaluation instruments and processes set forth in rules adopted by the State Board of Education to implement Public Act 96-861.

"Remediation" means the remediation plan, mid-point and final evaluations, and related processes and requirements set forth in subdivisions (i), (j), and (k) of Section 24A-5 of this Code.

"School district" means a school district or a program of a special education joint agreement.

"Second evaluator" means an evaluator who either conducts the mid-point and final remediation evaluation or conducts an independent assessment of whether the teacher completed the remediation plan with a rating equal to or better than a "Proficient" rating, all in accordance with subdivision (c) of this Section.

"Student growth components" means the components of a performance evaluation plan described in subdivision (c) of Section 24A-5 of this Code, as may be supplemented by administrative rules adopted by the State Board of Education.

"Teacher practice components" means the components of a

performance evaluation plan described in subdivisions (a) and (b) of Section 24A-5 of this Code, as may be supplemented by administrative rules adopted by the State Board of Education.

"Teacher representatives" means the exclusive bargaining representative of a school district's teachers or, if no exclusive bargaining representatives exists, a representative committee selected by teachers.

(b) This Section applies to all school districts, including those having 500,000 or more inhabitants. The optional dismissal process set forth in this Section is an alternative to those set forth in Sections 24-12 and 34-85 of this Code. Nothing in this Section is intended to change the existing practices or precedents under Section 24-12 or 34-85 of this Code, nor shall this Section be interpreted as implying standards and procedures that should or must be used as part of a remediation that precedes a dismissal sought under Section 24-12 or 34-85 of this Code.

A board may dismiss a teacher who has entered upon contractual continued service under this Section if the following are met:

(1) the cause of dismissal is that the teacher has failed to complete a remediation plan with a rating equal to or better than a "Proficient" rating;

(2) the "Unsatisfactory" performance evaluation rating that preceded remediation resulted from a PERA evaluation;
and

(3) the school district has complied with subsection (c) of this Section.

A school district may not, through agreement with a teacher or its teacher representatives, waive its right to dismiss a teacher under this Section.

(c) Each school district electing to use the dismissal process set forth in this Section must comply with the pre-remediation and remediation activities and requirements set forth in this subsection (c).

(1) Before a school district's first remediation relating to a dismissal under this Section, the school district must create and establish a list of at least 2 evaluators who will be available to serve as second evaluators under this Section. The school district shall provide its teacher representatives with an opportunity to submit additional names of teacher evaluators who will be available to serve as second evaluators and who will be added to the list created and established by the school district, provided that, unless otherwise agreed to by the school district, the teacher representatives may not submit more teacher evaluators for inclusion on the list than the number of evaluators submitted by the school district. Each teacher evaluator must either have (i) National Board of Professional Teaching Standards certification, with no "Unsatisfactory" or "Needs Improvement" performance evaluating ratings in his or her 2

most recent performance evaluation ratings; or (ii) "Excellent" performance evaluation ratings in 2 of his or her 3 most recent performance evaluations, with no "Needs Improvement" or "Unsatisfactory" performance evaluation ratings in his or her last 3 ratings. If the teacher representatives do not submit a list of teacher evaluators within 21 days after the school district's request, the school district may proceed with a remediation using a list that includes only the school district's selections. Either the school district or the teacher representatives may revise or add to their selections for the list at any time with notice to the other party, subject to the limitations set forth in this paragraph (1).

(2) Before a school district's first remediation relating to a dismissal under this Section, the school district shall, in good faith cooperation with its teacher representatives, establish a process for the selection of a second evaluator from the list created pursuant to paragraph (1) of this subsection (c). Such process may be amended at any time in good faith cooperation with the teacher representatives. If the teacher representatives are given an opportunity to cooperate with the school district and elect not to do so, the school district may, at its discretion, establish or amend the process for selection. Before the hearing officer and as part of any judicial review of a dismissal under this Section, a

teacher may not challenge a remediation or dismissal on the grounds that the process used by the school district to select a second evaluator was not established in good faith cooperation with its teacher representatives.

(3) For each remediation preceding a dismissal under this Section, the school district shall select a second evaluator from the list of second evaluators created pursuant to paragraph (1) of this subsection (c), using the selection process established pursuant to paragraph (2) of this subsection (c). The selected second evaluator may not be the same individual who determined the teacher's "Unsatisfactory" performance evaluation rating preceding remediation, and, if the second evaluator is an administrator, may not be a direct report to the individual who determined the teacher's "Unsatisfactory" performance evaluation rating preceding remediation. The school district's authority to select a second evaluator from the list of second evaluators must not be delegated or limited through any agreement with the teacher representatives, provided that nothing shall prohibit a school district and its teacher representatives from agreeing to a formal peer evaluation process as permitted under Article 24A of this Code that could be used to meet the requirements for the selection of second evaluators under this subsection (c).

(4) The second evaluator selected pursuant to paragraph (3) of this subsection (c) must either (i)

conduct the mid-point and final evaluation during remediation or (ii) conduct an independent assessment of whether the teacher completed the remediation plan with a rating equal to or better than a "Proficient" rating, which independent assessment shall include, but is not limited to, personal or video-recorded observations of the teacher that relate to the teacher practice components of the remediation plan. Nothing in this subsection (c) shall be construed to limit or preclude the participation of the evaluator who rated a teacher as "Unsatisfactory" in remediation.

(d) To institute a dismissal proceeding under this Section, the board must first provide written notice to the teacher within 30 days after the completion of the final remediation evaluation. The notice shall comply with the applicable hearing requirements and, in addition, must specify that dismissal is sought under this Section and include a copy of each performance evaluation relating to the scope of the hearing as described in this subsection (d).

The applicable hearing requirements shall apply to the teacher's request for a hearing, the selection and qualifications of the hearing officer, and pre-hearing and hearing procedures, except that all of the following must be met:

(1) The hearing officer must, in addition to meeting the qualifications set forth in the applicable hearing

requirements, have successfully completed the pre-qualification program described in subsection (b) of Section 24A-3 of this Code, unless the State Board of Education waives this requirement to provide an adequate pool of hearing officers for consideration.

(2) The scope of the hearing must be limited as follows:

(A) The school district must demonstrate the following:

(i) that the "Unsatisfactory" performance evaluation rating that preceded remediation applied the teacher practice components and student growth components and determined an overall evaluation rating of "Unsatisfactory" in accordance with the standards and requirements of the school district's evaluation plan;

(ii) that the remediation plan complied with the requirements of Section 24A-5 of this Code;

(iii) that the teacher failed to complete the remediation plan with a performance evaluation rating equal to or better than a "Proficient" rating, based upon a final remediation evaluation meeting the applicable standards and requirements of the school district's evaluation plan; and

(iv) that if the second evaluator selected pursuant to paragraph (3) of subsection (c) of this

Section does not conduct the mid-point and final evaluation and makes an independent assessment that the teacher completed the remediation plan with a rating equal to or better than a "Proficient" rating, the school district must demonstrate that the final remediation evaluation is a more valid assessment of the teacher's performance than the assessment made by the second evaluator.

(B) The teacher may only challenge the substantive and procedural aspects of (i) the "Unsatisfactory" performance evaluation rating that led to the remediation, (ii) the remediation plan, and (iii) the final remediation evaluation. To the extent the teacher challenges procedural aspects, including any in applicable collective bargaining agreement provisions, of a relevant performance evaluation rating or the remediation plan, the teacher must demonstrate how an alleged procedural defect materially affected the teacher's ability to demonstrate a level of performance necessary to avoid remediation or dismissal or successfully complete the remediation plan. Without any such material effect, a procedural defect shall not impact the assessment by the hearing officer, board, or reviewing court of the validity of a performance evaluation or a remediation

plan.

(C) The hearing officer shall only consider and give weight to performance evaluations relevant to the scope of the hearing as described in clauses (A) and (B) of this subdivision (2).

(3) Each party shall be given only 2 days to present evidence and testimony relating to the scope of the hearing, unless a longer period is mutually agreed to by the parties or deemed necessary by the hearing officer to enable a party to present adequate evidence and testimony to address the scope of the hearing, including due to the other party's cross-examination of the party's witnesses.

(e) The provisions of Sections 24-12 and 34-85 pertaining to the decision or recommendation of the hearing officer do not apply to dismissal proceedings under this Section. For any dismissal proceedings under this Section, the hearing officer shall not issue a decision, and shall issue only findings of fact and a recommendation, including the reasons therefor, to the board to either retain or dismiss the teacher and shall give a copy of the report to both the teacher and the superintendent of the school district. The hearing officer's findings of fact and recommendation must be issued within 30 days from the close of the record of the hearing.

The State Board of Education shall adopt rules regarding the length of the hearing officer's findings of fact and recommendation. If a hearing officer fails without good cause,

specifically provided in writing to both parties and the State Board of Education, to render a recommendation within 30 days after the hearing is concluded or the record is closed, whichever is later, the parties may mutually agree to select a hearing officer pursuant to the alternative procedure, as provided in Section 24-12 or 34-85, to rehear the charges heard by the hearing officer who failed to render a recommendation or to review the record and render a recommendation. If any hearing officer fails without good cause, specifically provided in writing to both parties and the State Board of Education, to render a recommendation within 30 days after the hearing is concluded or the record is closed, whichever is later, the hearing officer shall be removed from the master list of hearing officers maintained by the State Board of Education for not more than 24 months. The parties and the State Board of Education may also take such other actions as it deems appropriate, including recovering, reducing, or withholding any fees paid or to be paid to the hearing officer. If any hearing officer repeats such failure, he or she shall be permanently removed from the master list of hearing officers maintained by the State Board of Education.

(f) The board, within 45 days after receipt of the hearing officer's findings of fact and recommendation, shall decide, through adoption of a written order, whether the teacher must be dismissed from its employ or retained, provided that only PERA-trained board members may participate in the vote with

respect to the decision.

If the board dismisses the teacher notwithstanding the hearing officer's recommendation of retention, the board shall make a conclusion, giving its reasons therefor, and such conclusion and reasons must be included in its written order. The failure of the board to strictly adhere to the timelines contained in this Section does not render it without jurisdiction to dismiss the teacher. The board shall not lose jurisdiction to discharge the teacher if the hearing officer fails to render a recommendation within the time specified in this Section. The decision of the board is final, unless reviewed as provided in subsection (g) of this Section.

If the board retains the teacher, the board shall enter a written order stating the amount of back pay and lost benefits, less mitigation, to be paid to the teacher, within 45 days of its retention order.

(g) A teacher dismissed under this Section may apply for and obtain judicial review of a decision of the board in accordance with the provisions of the Administrative Review Law, except as follows:

(1) for a teacher dismissed by a school district having 500,000 inhabitants or more, such judicial review must be taken directly to the appellate court of the judicial district in which the board maintains its primary administrative office, and any direct appeal to the appellate court must be filed within 35 days from the date

that a copy of the decision sought to be reviewed was served upon the teacher;

(2) for a teacher dismissed by a school district having less than 500,000 inhabitants after the hearing officer recommended dismissal, such judicial review must be taken directly to the appellate court of the judicial district in which the board maintains its primary administrative office, and any direct appeal to the appellate court must be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the teacher; and

(3) for all school districts, if the hearing officer recommended dismissal, the decision of the board may be reversed only if it is found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

In the event judicial review is instituted by a teacher, any costs of preparing and filing the record of proceedings must be paid by the teacher. If a decision of the board is adjudicated upon judicial review in favor of the teacher, then the court shall remand the matter to the board with direction for entry of an order setting the amount of back pay, lost benefits, and costs, less mitigation. The teacher may challenge the board's order setting the amount of back pay, lost benefits, and costs, less mitigation, through an expedited arbitration procedure with the costs of the arbitrator borne by the board.

(105 ILCS 5/24A-2.5)

Sec. 24A-2.5. Definitions. In this Article:

"Evaluator" means:

- (1) an administrator qualified under Section 24A-3; or
- (2) other individuals qualified under Section 24A-3, provided that, if such other individuals are in the bargaining unit of a district's teachers, the district and the exclusive bargaining representative of that unit must agree to those individuals evaluating other bargaining unit members.

Notwithstanding anything to the contrary in item (2) of this definition, a school district operating under Article 34 of this Code may require department chairs qualified under Section 24A-3 to evaluate teachers in their department or departments, provided that the school district shall bargain with the bargaining representative of its teachers over the impact and effects on department chairs of such a requirement.

"Implementation date" means, unless otherwise specified and provided that the requirements set forth in subsection (d) of Section 24A-20 have been met:

- (1) For school districts having 500,000 or more inhabitants, in at least 300 schools by September 1, 2012 and in the remaining schools by September 1, 2013.
- (2) For school districts having less than 500,000 inhabitants and receiving a Race to the Top Grant or School

Improvement Grant after the effective date of this amendatory Act of the 96th General Assembly, the date specified in those grants for implementing an evaluation system for teachers and principals incorporating student growth as a significant factor.

(3) For the lowest performing 20% percent of remaining school districts having less than 500,000 inhabitants (with the measure of and school year or years used for school district performance to be determined by the State Superintendent of Education at a time determined by the State Superintendent), September 1, 2015.

(4) For all other school districts having less than 500,000 inhabitants, September 1, 2016.

Notwithstanding items (3) and (4) of this definition, a school district and the exclusive bargaining representative of its teachers may jointly agree in writing to an earlier implementation date, provided that such date must not be earlier than September 1, 2013. The written agreement of the district and the exclusive bargaining representative must be transmitted to the State Board of Education.

"Race to the Top Grant" means a grant made by the Secretary of the U.S. Department of Education for the program first funded pursuant to paragraph (2) of Section 14006(a) of the American Recovery and Reinvestment Act of 2009.

"School Improvement Grant" means a grant made by the Secretary of the U.S. Department of Education pursuant to

Section 1003(g) of the Elementary and Secondary Education Act.

(Source: P.A. 96-861, eff. 1-15-10.)

(105 ILCS 5/24A-5) (from Ch. 122, par. 24A-5)

Sec. 24A-5. Content of evaluation plans. This Section does not apply to teachers assigned to schools identified in an agreement entered into between the board of a school district operating under Article 34 of this Code and the exclusive representative of the district's teachers in accordance with Section 34-85c of this Code.

Each school district to which this Article applies shall establish a teacher evaluation plan which ensures that each teacher in contractual continued service is evaluated at least once in the course of every 2 school years.

By no later than September 1, 2012, each school district shall establish a teacher evaluation plan that ensures that:

(1) each teacher not in contractual continued service is evaluated at least once every school year; and

(2) each teacher in contractual continued service is evaluated at least once in the course of every 2 school years. However, any teacher in contractual continued service whose performance is rated as either "needs improvement" or "unsatisfactory" must be evaluated at least once in the school year following the receipt of such rating.

Notwithstanding anything to the contrary in this Section or

any other Section of the School Code, a principal shall not be prohibited from evaluating any teachers within a school during his or her first year as principal of such school.

The evaluation plan shall comply with the requirements of this Section and of any rules adopted by the State Board of Education pursuant to this Section.

The plan shall include a description of each teacher's duties and responsibilities and of the standards to which that teacher is expected to conform, and shall include at least the following components:

(a) personal observation of the teacher in the classroom by the evaluator, unless the teacher has no classroom duties.

(b) consideration of the teacher's attendance, planning, instructional methods, classroom management, where relevant, and competency in the subject matter taught.

(c) by no later than the applicable implementation date, consideration of student growth as a significant factor in the rating of the teacher's performance.

(d) prior to September 1, 2012, rating of the performance of teachers in contractual continued service as either:

(i) "excellent", "satisfactory" or "unsatisfactory"; or

(ii) "excellent", "proficient", "needs

improvement" or "unsatisfactory".

(e) on and after September 1, 2012, rating of the performance of all teachers ~~in contractual continued service~~ as "excellent", "proficient", "needs improvement" or "unsatisfactory".

(f) specification as to the teacher's strengths and weaknesses, with supporting reasons for the comments made.

(g) inclusion of a copy of the evaluation in the teacher's personnel file and provision of a copy to the teacher.

(h) within 30 school days after the completion of an evaluation rating a teacher in contractual continued service as "needs improvement", development by the evaluator, in consultation with the teacher, and taking into account the teacher's on-going professional responsibilities including his or her regular teaching assignments, of a professional development plan directed to the areas that need improvement and any supports that the district will provide to address the areas identified as needing improvement.

(i) within 30 school days after completion of an evaluation rating a teacher in contractual continued service as "unsatisfactory", development and commencement by the district of a remediation plan designed to correct deficiencies cited, provided the deficiencies are deemed remediable. In all school districts the remediation plan

for unsatisfactory, tenured teachers shall provide for 90 school days of remediation within the classroom, unless an applicable collective bargaining agreement provides for a shorter duration. In all school districts evaluations issued pursuant to this Section shall be issued within 10 days after the conclusion of the respective remediation plan. However, the school board or other governing authority of the district shall not lose jurisdiction to discharge a teacher in the event the evaluation is not issued within 10 days after the conclusion of the respective remediation plan.

(j) participation in the remediation plan by the teacher in contractual continued service rated "unsatisfactory", an evaluator and a consulting teacher selected by the evaluator of the teacher who was rated "unsatisfactory", which consulting teacher is an educational employee as defined in the Educational Labor Relations Act, has at least 5 years' teaching experience, and a reasonable familiarity with the assignment of the teacher being evaluated, and who received an "excellent" rating on his or her most recent evaluation. Where no teachers who meet these criteria are available within the district, the district shall request and the applicable regional office of education shall supply, to participate in the remediation process, an individual who meets these criteria.

In a district having a population of less than 500,000 with an exclusive bargaining agent, the bargaining agent may, if it so chooses, supply a roster of qualified teachers from whom the consulting teacher is to be selected. That roster shall, however, contain the names of at least 5 teachers, each of whom meets the criteria for consulting teacher with regard to the teacher being evaluated, or the names of all teachers so qualified if that number is less than 5. In the event of a dispute as to qualification, the State Board shall determine qualification.

(k) a mid-point and final evaluation by an evaluator during and at the end of the remediation period, immediately following receipt of a remediation plan provided for under subsections (i) and (j) of this Section. Each evaluation shall assess the teacher's performance during the time period since the prior evaluation; provided that the last evaluation shall also include an overall evaluation of the teacher's performance during the remediation period. A written copy of the evaluations and ratings, in which any deficiencies in performance and recommendations for correction are identified, shall be provided to and discussed with the teacher within 10 school days after the date of the evaluation, unless an applicable collective bargaining agreement provides to the contrary. These subsequent evaluations shall be conducted by an

evaluator. The consulting teacher shall provide advice to the teacher rated "unsatisfactory" on how to improve teaching skills and to successfully complete the remediation plan. The consulting teacher shall participate in developing the remediation plan, but the final decision as to the evaluation shall be done solely by the evaluator, unless an applicable collective bargaining agreement provides to the contrary. Evaluations at the conclusion of the remediation process shall be separate and distinct from the required annual evaluations of teachers and shall not be subject to the guidelines and procedures relating to those annual evaluations. The evaluator may but is not required to use the forms provided for the annual evaluation of teachers in the district's evaluation plan.

(l) reinstatement to the evaluation schedule set forth in the district's evaluation plan for any teacher in contractual continued service who achieves a rating equal to or better than "satisfactory" or "proficient" in the school year following a rating of "needs improvement" or "unsatisfactory".

(m) dismissal in accordance with subsection (d) of Section 24-12 or Section 24-16.5 or 34-85 of this ~~the School Code~~ of any teacher who fails to complete any applicable remediation plan with a rating equal to or better than a "satisfactory" or "proficient" rating. Districts and teachers subject to dismissal hearings are

precluded from compelling the testimony of consulting teachers at such hearings under subsection (d) of Section 24-12 or Section 24-16.5 or 34-85 of this Code, either as to the rating process or for opinions of performances by teachers under remediation.

(n) After the implementation date of an evaluation system for teachers in a district as specified in Section 24A-2.5 of this Code, if a teacher in contractual continued service successfully completes a remediation plan following a rating of "unsatisfactory" and receives a subsequent rating of "unsatisfactory" in any of the teacher's annual or biannual overall performance evaluation ratings received during the 36-month period following the teacher's completion of the remediation plan, then the school district may forego remediation and seek dismissal in accordance with subsection (d) of Section 24-12 or Section 34-85 of this Code.

Nothing in this Section or Section 24A-4 shall be construed as preventing immediate dismissal of a teacher for deficiencies which are deemed irremediable or for actions which are injurious to or endanger the health or person of students in the classroom or school, or preventing the dismissal or non-renewal of teachers not in contractual continued service for any reason not prohibited by applicable employment, labor, and civil rights laws. Failure to strictly comply with the time requirements contained in Section 24A-5 shall not invalidate

the results of the remediation plan.

(Source: P.A. 95-510, eff. 8-28-07; 96-861, eff. 1-15-10; 96-1423, eff. 8-3-10.)

(105 ILCS 5/34-84) (from Ch. 122, par. 34-84)

Sec. 34-84. Appointments and promotions of teachers. Appointments and promotions of teachers shall be made for merit only, and after satisfactory service for a probationary period of 3 years with respect to probationary employees employed as full-time teachers in the public school system of the district before January 1, 1998 and 4 years with respect to probationary employees who are first employed as full-time teachers in the public school system of the district on or after January 1, 1998, ~~during which period the board may dismiss or discharge any such probationary employee upon the recommendation, accompanied by the written reasons therefor, of the general superintendent of schools and after which period~~ appointments of teachers shall become permanent, subject to removal for cause in the manner provided by Section 34-85.

For a probationary-appointed teacher in full-time service who is appointed on or after July 1, 2013 and who receives ratings of "excellent" during his or her first 3 school terms of full-time service, the probationary period shall be 3 school terms of full-time service. For a probationary-appointed teacher in full-time service who is appointed on or after July 1, 2013 and who had previously entered into contractual

continued service in another school district in this State or a program of a special education joint agreement in this State, as defined in Section 24-11 of this Code, the probationary period shall be 2 school terms of full-time service, provided that (i) the teacher voluntarily resigned or was honorably dismissed from the prior district or program within the 3-month period preceding his or her appointment date, (ii) the teacher's last 2 ratings in the prior district or program were at least "proficient" and were issued after the prior district's or program's PERA implementation date, as defined in Section 24-11 of this Code, and (iii) the teacher receives ratings of "excellent" during his or her first 2 school terms of full-time service.

For a probationary-appointed teacher in full-time service who is appointed on or after July 1, 2013 and who has not entered into contractual continued service after 2 or 3 school terms of full-time service as provided in this Section, the probationary period shall be 4 school terms of full-time service, provided that the teacher receives a rating of at least "proficient" in the last school term and a rating of at least "proficient" in either the second or third school term.

As used in this Section, "school term" means the school term established by the board pursuant to Section 10-19 of this Code, and "full-time service" means the teacher has actually worked at least 150 days during the school term. As used in this Article, "teachers" means and includes all members of the

teaching force excluding the general superintendent and principals.

There shall be no reduction in teachers because of a decrease in student membership or a change in subject requirements within the attendance center organization after the 20th day following the first day of the school year, except that: (1) this provision shall not apply to desegregation positions, special education positions, or any other positions funded by State or federal categorical funds, and (2) at attendance centers maintaining any of grades 9 through 12, there may be a second reduction in teachers on the first day of the second semester of the regular school term because of a decrease in student membership or a change in subject requirements within the attendance center organization.

The school principal shall make the decision in selecting teachers to fill new and vacant positions consistent with Section 34-8.1.

(Source: P.A. 89-15, eff. 5-30-95; 90-548, eff. 1-1-98.)

(105 ILCS 5/34-85) (from Ch. 122, par. 34-85)

Sec. 34-85. Removal for cause; Notice and hearing; Suspension.

(a) No teacher employed by the board of education shall (after serving the probationary period specified in Section 34-84) be removed except for cause. Teachers (who have completed the probationary period specified in Section 34-84 of

this Code) shall be removed for cause in accordance with the procedures set forth in this Section or, at the board's option, the procedures set forth in Section 24-16.5 of this Code or such other procedures established in an agreement entered into between the board and the exclusive representative of the district's teachers under Section 34-85c of this Code for teachers (who have completed the probationary period specified in Section 34-84 of this Code) assigned to schools identified in that agreement. No principal employed by the board of education shall be removed during the term of his or her performance contract except for cause, which may include but is not limited to the principal's repeated failure to implement the school improvement plan or to comply with the provisions of the Uniform Performance Contract, including additional criteria established by the Council for inclusion in the performance contract pursuant to Section 34-2.3.

Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher or principal must be given reasonable warning in writing, stating specifically the causes that, if not removed, may result in charges; however, no such written warning is required if the causes have been the subject of a remediation plan pursuant to Article 24A of this Code or if the board and the exclusive representative of the district's teachers have entered into an agreement pursuant to Section 34-85c of this Code, pursuant to an alternative system of remediation. No written warning shall

be required for conduct on the part of a teacher or principal that is cruel, immoral, negligent, or criminal or that in any way causes psychological or physical harm or injury to a student, as that conduct is deemed to be irremediable. No written warning shall be required for a material breach of the uniform principal performance contract, as that conduct is deemed to be irremediable; provided that not less than 30 days before the vote of the local school council to seek the dismissal of a principal for a material breach of a uniform principal performance contract, the local school council shall specify the nature of the alleged breach in writing and provide a copy of it to the principal.

(1) To initiate dismissal proceedings against a teacher or principal, the ~~The~~ general superintendent must first approve written charges and specifications against the teacher or principal. A local school council may direct the general superintendent to approve written charges against its principal on behalf of the Council upon the vote of 7 members of the Council. The general superintendent must approve those charges within 45 calendar days or provide a written reason for not approving those charges. A written notice of those charges, including specifications, shall be served upon the teacher or principal within 10 business days of the approval of the charges. Any written notice sent on or after July 1, 2012 shall also inform the teacher or principal of the right to

request a hearing before a mutually selected hearing officer, with the cost of the hearing officer split equally between the teacher or principal and the board, or a hearing before a qualified hearing officer chosen by the general superintendent, with the cost of the hearing officer paid by the board. If the teacher or principal cannot be found upon diligent inquiry, such charges may be served upon him by mailing a copy thereof in a sealed envelope by prepaid certified mail, return receipt requested, to the teacher's or principal's last known address. A return receipt showing delivery to such address within 20 calendar days after the date of the approval of the charges shall constitute proof of service.

(2) No hearing upon the charges is required unless the teacher or principal within 17 calendar ~~10~~ days after receiving notice requests in writing of the general superintendent that a hearing be scheduled, in which case the general superintendent shall schedule a hearing on those charges before a disinterested hearing officer on a date no less than 15 nor more than 30 days after the approval of the charges. Pending the hearing of the charges, the general superintendent or his or her designee may suspend the teacher or principal charged without pay in accordance with rules prescribed by the board, provided that if the teacher or principal charged is not dismissed based on the charges, he or she must be made whole for lost

earnings, less setoffs for mitigation.

(3) The board shall maintain a list of at least 9 qualified hearing officers who will conduct hearings on charges and specifications. The list must be developed in good faith consultation with the exclusive representative of the board's teachers and professional associations that represent the board's principals. The list may be revised on July 1st of each year or earlier as needed. To be a qualified hearing officer, the person must (i) ~~The general superintendent shall forward a copy of the notice to the State Board of Education within 5 days from the date of the approval of the charges. Within 10 days after receiving the notice of hearing, the State Board of Education shall provide the teacher or principal and the general superintendent with a list of 5 prospective, impartial hearing officers. Each person on the list must be accredited by a national arbitration organization and have had a minimum of 5 years of experience as an arbitrator in cases involving labor and employment relations matters between educational employers and educational employees or their exclusive bargaining representatives~~ and (ii) beginning September 1, 2012, have participated in training provided or approved by the State Board of Education for teacher dismissal hearing officers so that he or she is familiar with issues generally involved in evaluative and non-evaluative dismissals.

(3) Within 5 business days after receiving the notice of request for a hearing, the ~~The~~ general superintendent and the teacher or principal or their legal representatives ~~within 3 days from receipt of the list~~ shall alternately strike one name from the list until only one name remains. Unless waived by the teacher, the teacher or principal shall have the right to proceed first with the striking. If the teacher or principal fails to participate in the striking process, the general superintendent shall either select the hearing officer from the list developed pursuant to this paragraph (3) or select another qualified hearing officer from the master list maintained by the State Board of Education pursuant to subsection (c) of Section 24-12 of this Code. ~~Within 3 days of receipt of the first list provided by the State Board of Education, the general superintendent and the teacher or principal or their legal representatives shall each have the right to reject all prospective hearing officers named on the first list and to require the State Board of Education to provide a second list of 5 prospective, impartial hearing officers, none of whom were named on the first list. Within 5 days after receiving this request for a second list, the State Board of Education shall provide the second list of 5 prospective, impartial hearing officers. The procedure for selecting a hearing officer from the second list shall be the same as the procedure for the first list. Each party~~

~~shall promptly serve written notice on the other of any name stricken from the list. If the teacher or principal fails to do so, the general superintendent may select the hearing officer from any name remaining on the list. The teacher or principal may waive the hearing at any time prior to the appointment of the hearing officer. Notice of the selection of the hearing officer shall be given to the State Board of Education. The hearing officer shall be notified of his selection by the State Board of Education. A signed acceptance shall be filed with the State Board of Education within 5 days of receipt of notice of the selection. The State Board of Education shall notify the teacher or principal and the board of its appointment of the hearing officer. In the alternative to selecting a hearing officer from the first or second list received from the State Board of Education, the general superintendent and the teacher or principal or their legal representatives may mutually agree to select an impartial hearing officer who is not on a list received from the State Board of Education, either by direct appointment by the parties or by using procedures for the appointment of an arbitrator established by the Federal Mediation and Conciliation Service or the American Arbitration Association. The parties shall notify the State Board of Education of their intent to select a hearing officer using an alternative procedure within 3 days of receipt of a list of prospective~~

~~hearing officers provided by the State Board of Education. Any person selected by the parties under this alternative procedure for the selection of a hearing officer shall have the same qualifications and authority as a hearing officer selected from a list provided by the State Board of Education. The teacher or principal may waive the hearing at any time prior to the appointment of the hearing officer. The State Board of Education shall promulgate uniform standards and rules of procedure for such hearings, including reasonable rules of discovery.~~

(4) If the notice of dismissal was sent to the teacher or principal before July 1, 2012, the fees and costs ~~The per diem allowance~~ for the hearing officer shall be paid by the State Board of Education. If the notice of dismissal was sent to the teacher or principal on or after July 1, 2012, the hearing officer's fees and costs must be paid as follows in this paragraph (4). The fees and permissible costs for the hearing officer shall be determined by the State Board of Education. If the hearing officer is mutually selected by the parties through alternate striking in accordance with paragraph (3) of this subsection (a), then the board and the teacher or their legal representative shall each pay 50% of the fees and costs and any supplemental allowance to which they agree. If the hearing officer is selected by ~~The hearing officer shall hold a hearing and render findings of fact and a~~

~~recommendation to~~ the general superintendent without the participation of the teacher or principal, then the board shall pay 100% of the hearing officer fees and costs. The hearing officer shall submit for payment a billing statement to the parties that itemizes the charges and expenses and divides them in accordance with this Section.

(5) The teacher or the principal charged is required to answer the charges and specifications and aver affirmative matters in his or her defense, and the time for doing so must be set by the hearing officer. The State Board of Education shall adopt rules so that each party has a fair opportunity to present its case and to ensure that the dismissal proceeding is concluded in an expeditious manner. The rules shall address, without limitation, the teacher or principal's answer and affirmative defenses to the charges and specifications; a requirement that each party make mandatory disclosures without request to the other party and then update the disclosure no later than 10 calendar days prior to the commencement of the hearing, including a list of the names and addresses of persons who may be called as witnesses at the hearing, a summary of the facts or opinions each witness will testify to, and all other documents and materials, including information maintained electronically, relevant to its own as well as the other party's case (the hearing officer may exclude witnesses and exhibits not identified and shared, except

those offered in rebuttal for which the party could not reasonably have anticipated prior to the hearing); pre-hearing discovery and preparation, including provision for written interrogatories and requests for production of documents, provided that discovery depositions are prohibited; the conduct of the hearing; the right of each party to be represented by counsel, the offer of evidence and witnesses and the cross-examination of witnesses; the authority of the hearing officer to issue subpoenas and subpoenas duces tecum, provided that the hearing officer may limit the number of witnesses to be subpoenaed in behalf of each party to no more than 7; the length of post-hearing briefs; and the form, length, and content of hearing officers' reports and recommendations to the general superintendent.

The hearing officer shall commence the hearing within 75 calendar days and conclude the hearing within 120 calendar days after being selected by the parties as the hearing officer, provided that these timelines may be modified upon the showing of good cause or mutual agreement of the parties. Good cause for the purposes of this paragraph (5) shall mean the illness or otherwise unavoidable emergency of the teacher, district representative, their legal representatives, the hearing officer, or an essential witness as indicated in each party's pre-hearing submission. In a dismissal hearing,

the hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to Article 24A that are relevant to the issues in the hearing. The teacher or principal has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present defenses to the charges. Each party shall have no more than 3 days to present its case, unless extended by the hearing officer to enable a party to present adequate evidence and testimony, including due to the other party's cross-examination of the party's witnesses, for good cause or by mutual agreement of the parties. The State Board of Education shall define in rules the meaning of "day" for such purposes. ~~The hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of the teacher or principal against whom a charge is made or the general superintendent, shall issue such subpoenas, but the hearing officer may limit the number of witnesses to be subpoenaed in behalf of the teacher or principal or the general superintendent to not more than 10 each.~~ All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or steno-type notes of all the testimony. The costs of the reporter's attendance and services at the hearing shall be

paid by the party or parties who are paying the fees and costs of the hearing officer ~~State Board of Education~~. Either party desiring a transcript of the hearing shall pay for the cost thereof. At the close of the hearing, the hearing officer shall direct the parties to submit post-hearing briefs no later than 21 calendar days after receipt of the transcript. Either or both parties may waive submission of briefs.

~~Pending the hearing of the charges, the person charged may be suspended in accordance with rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension.~~

~~Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher or principal shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges; however, no such written warning shall be required if the causes have been the subject of a remediation plan pursuant to Article 24A or where the board of education and the exclusive representative of the district's teachers have entered into an agreement pursuant to Section 34-85c of this Code, pursuant to an alternative system of remediation. No written warning shall be required for conduct on the part of a teacher or principal which is cruel, immoral, negligent, or criminal or which in any way causes psychological or physical harm~~

~~or injury to a student as that conduct is deemed to be irremediable. No written warning shall be required for a material breach of the uniform principal performance contract as that conduct is deemed to be irremediable; provided however, that not less than 30 days before the vote of the local school council to seek the dismissal of a principal for a material breach of a uniform principal performance contract, the local school council shall specify the nature of the alleged breach in writing and provide a copy of it to the principal.~~

~~The hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to Article 24A.~~

(6) The hearing officer shall within 30 calendar ~~45~~ days from the conclusion of the hearing report to the general superintendent findings of fact and a recommendation as to whether or not the teacher or principal shall be dismissed and shall give a copy of the report to both the teacher or principal and the general superintendent. The State Board of Education shall provide by rule the form of the hearing officer's report and recommendation.

(7) The board, within 45 days of receipt of the hearing officer's findings of fact and recommendation, shall make a decision as to whether the teacher or principal shall be dismissed from its employ. The failure of the board to

strictly adhere to the timeliness contained herein shall not render it without jurisdiction to dismiss the teacher or principal. In the event that the board declines to dismiss the teacher or principal after review of a hearing officer's recommendation, the board shall set the amount of back pay and benefits to award the teacher or principal, which shall include offsets for interim earnings and failure to mitigate losses. The board shall establish procedures for the teacher's or principal's submission of evidence to it regarding lost earnings, lost benefits, mitigation, and offsets. ~~If the hearing officer fails to render a decision within 45 days, the State Board of Education shall communicate with the hearing officer to determine the date that the parties can reasonably expect to receive the decision. The State Board of Education shall provide copies of all such communications to the parties. In the event the hearing officer fails without good cause to make a decision within the 45 day period, the name of such hearing officer shall be struck for a period not less than 24 months from the master list of hearing officers maintained by the State Board of Education. The board shall not lose jurisdiction to discharge the teacher or principal if the hearing officer fails to render a decision within the time specified in this Section. If a hearing officer fails to render a decision within 3 months after the hearing is declared closed, the State Board of Education~~

~~shall provide the parties with a new list of prospective, impartial hearing officers, with the same qualifications provided herein, one of whom shall be selected, as provided in this Section, to rehear the charges heard by the hearing officer who failed to render a decision. The parties may also select a hearing officer pursuant to the alternative procedure, as provided in this Section, to rehear the charges heard by the hearing officer who failed to render a decision. A violation of the professional standards set forth in "The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes", of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service, or the failure of a hearing officer to render a decision within 3 months after the hearing is declared closed shall be grounds for removal of the hearing officer from the master list of hearing officers maintained by the State Board of Education. The decision of the board is final unless reviewed in accordance with paragraph (8) of this subsection (a) as provided in Section 34-85b of this Act.~~

(8) The teacher may seek judicial review of the board's decision in accordance with the Administrative Review Law, which is specifically incorporated in this Section, except that the review must be initiated in the Illinois Appellate Court for the First District. In the event judicial review

is instituted, any costs of preparing and filing the record of proceedings shall be paid by the party instituting the review. In the event the appellate court reverses a board decision to dismiss a teacher or principal and directs the board to pay the teacher or the principal back pay and benefits, the appellate court shall remand the matter to the board to issue an administrative decision as to the amount of back pay and benefits, which shall include a calculation of the lost earnings, lost benefits, mitigation, and offsets based on evidence submitted to the board in accordance with procedures established by the board. ~~If a decision of the board is adjudicated upon review or appeal in favor of the teacher or principal, then the trial court shall order reinstatement and shall determine the amount for which the board is liable including but not limited to loss of income and costs incurred therein.~~

(b) Nothing in this Section affects the validity of removal for cause hearings commenced prior to the effective date of this amendatory Act of the 97th General Assembly 1978.

The changes made by this amendatory Act of the 97th General Assembly shall apply to dismissals instituted on or after September 1, 2011 or the effective date of this amendatory Act of the 97th General Assembly, whichever is later. Any dismissal instituted prior to the effective date of these changes must be carried out in accordance with the requirements of this Section

prior to amendment by this amendatory Act of 97th General Assembly.

(Source: P.A. 95-510, eff. 8-28-07.)

(105 ILCS 5/34-85c)

Sec. 34-85c. Alternative procedures for teacher evaluation, remediation, and removal for cause after remediation.

(a) Notwithstanding any law to the contrary, the board and the exclusive representative of the district's teachers are hereby authorized to enter into an agreement to establish alternative procedures for teacher evaluation, remediation, and removal for cause after remediation, including an alternative system for peer evaluation and recommendations; provided, however, that no later than September 1, 2012: (i) any alternative procedures must include provisions whereby student performance data is a significant factor in teacher evaluation and (ii) teachers are rated as "excellent", "proficient", "needs improvement" or "unsatisfactory". Pursuant exclusively to that agreement, teachers assigned to schools identified in that agreement shall be subject to an alternative performance evaluation plan and remediation procedures in lieu of the plan and procedures set forth in Article 24A of this Code and alternative removal for cause standards and procedures in lieu of the removal standards and procedures set forth in Section ~~Sections~~ 34-85 and ~~34-85b~~ of

this Code. To the extent that the agreement provides a teacher with an opportunity for a hearing on removal for cause before an independent hearing officer in accordance with Section ~~Sections 34-85 and 34-85b~~ or otherwise, the hearing officer shall be governed by the alternative performance evaluation plan, remediation procedures, and removal standards and procedures set forth in the agreement in making findings of fact and a recommendation.

(b) The board and the exclusive representative of the district's teachers shall submit a certified copy of an agreement as provided under subsection (a) of this Section to the State Board of Education.

(Source: P.A. 95-510, eff. 8-28-07; 96-861, eff. 1-15-10.)

Section 10. The Illinois Educational Labor Relations Act is amended by changing Sections 4.5, 12, and 13 as follows:

(115 ILCS 5/4.5)

Sec. 4.5. Subjects of collective bargaining.

(a) Notwithstanding the existence of any other provision in this Act or other law, collective bargaining between an educational employer whose territorial boundaries are coterminous with those of a city having a population in excess of 500,000 and an exclusive representative of its employees may include any of the following subjects:

(1) (Blank).

(2) Decisions to contract with a third party for one or more services otherwise performed by employees in a bargaining unit and the procedures for obtaining such contract or the identity of the third party.

(3) Decisions to layoff or reduce in force employees.

(4) Decisions to determine class size, class staffing and assignment, class schedules, academic calendar, length of the work and school day, length of the work and school year, hours and places of instruction, or pupil assessment policies.

(5) Decisions concerning use and staffing of experimental or pilot programs and decisions concerning use of technology to deliver educational programs and services and staffing to provide the technology.

(b) The subject or matters described in subsection (a) are permissive subjects of bargaining between an educational employer and an exclusive representative of its employees and, for the purpose of this Act, are within the sole discretion of the educational employer to decide to bargain, provided that the educational employer is required to bargain over the impact of a decision concerning such subject or matter on the bargaining unit upon request by the exclusive representative. During this bargaining, the educational employer shall not be precluded from implementing its decision. If, after a reasonable period of bargaining, a dispute or impasse exists between the educational employer and the exclusive

representative, the dispute or impasse shall be resolved exclusively as set forth in subsection (b) of Section 12 of this Act in lieu of a strike under Section 13 of this Act.

(c) A provision in a collective bargaining agreement that was rendered null and void because it involved a prohibited subject of collective bargaining under this subsection (c) as this subsection (c) existed before the effective date of this amendatory Act of the 93rd General Assembly remains null and void and shall not otherwise be reinstated in any successor agreement unless the educational employer and exclusive representative otherwise agree to include an agreement reached on a subject or matter described in subsection (a) of this Section as subsection (a) existed before this amendatory Act of the 93rd General Assembly.

(Source: P.A. 93-3, eff. 4-16-03.)

(115 ILCS 5/12) (from Ch. 48, par. 1712)

Sec. 12. Impasse procedures.

(a) This subsection (a) applies only to collective bargaining between an educational employer that is not a public school district organized under Article 34 of the School Code and an exclusive representative of its employees.

If the parties engaged in collective bargaining have not reached an agreement by 90 days before the scheduled start of the forthcoming school year, the parties shall notify the Illinois Educational Labor Relations Board concerning the

status of negotiations. This notice shall include a statement on whether mediation has been used.

Upon demand of either party, collective bargaining between the employer and an exclusive bargaining representative must begin within 60 days of the date of certification of the representative by the Board, or in the case of an existing exclusive bargaining representative, within 60 days of the receipt by a party of a demand to bargain issued by the other party. Once commenced, collective bargaining must continue for at least a 60 day period, unless a contract is entered into.

Except as otherwise provided in subsection (b) of this Section, if after a reasonable period of negotiation and within 90 ~~45~~ days of the scheduled start of the forth-coming school year, the parties engaged in collective bargaining have reached an impasse, either party may petition the Board to initiate mediation. Alternatively, the Board on its own motion may initiate mediation during this period. However, mediation shall be initiated by the Board at any time when jointly requested by the parties and the services of the mediators shall continuously be made available to the employer and to the exclusive bargaining representative for purposes of arbitration of grievances and mediation or arbitration of contract disputes. If requested by the parties, the mediator may perform fact-finding and in so doing conduct hearings and make written findings and recommendations for resolution of the dispute. Such mediation shall be provided by the Board and

shall be held before qualified impartial individuals. Nothing prohibits the use of other individuals or organizations such as the Federal Mediation and Conciliation Service or the American Arbitration Association selected by both the exclusive bargaining representative and the employer.

If the parties engaged in collective bargaining fail to reach an agreement within 45 ~~15~~ days of the scheduled start of the forthcoming school year and have not requested mediation, the Illinois Educational Labor Relations Board shall invoke mediation.

Whenever mediation is initiated or invoked under this subsection (a), the parties may stipulate to defer selection of a mediator in accordance with rules adopted by the Board.

(a-5) This subsection (a-5) applies only to collective bargaining between a public school district or a combination of public school districts, including, but not limited to, joint cooperatives, that is not organized under Article 34 of the School Code and an exclusive representative of its employees.

(1) Any time after 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Notification of an impasse must be filed in writing with the Board, and copies of the notification must be submitted to the parties on the same day the notification is filed with the Board.

(2) Within 7 days after the declaration of impasse, each party shall submit to the mediator and the other party

in writing the final offer of the party, including a cost summary of the offer. Seven days after receipt of the parties' final offers, the mediator shall make public the final offers and each party's cost summary dealing with those issues on which the parties have failed to reach agreement. The mediator shall make the final offers public by filing them with the Board, which shall immediately post the offers on its Internet website. On the same day of publication by the mediator, at a minimum, the school district shall distribute notice of the availability of the offers on the Board's Internet website to all news media that have filed an annual request for notices from the school district pursuant to Section 2.02 of the Open Meetings Act.

(a-10) This subsection (a-10) applies only to collective bargaining between a public school district organized under Article 34 of the School Code and an exclusive representative of its employees.

(1) For collective bargaining agreements between an educational employer whose territorial boundaries are coterminous with those of a city having a population in excess of 500,000 and an exclusive representative of its employees, if the parties fail to reach an agreement after a reasonable period of mediation, the dispute shall be submitted to fact-finding in accordance with this subsection (a-10). Either the educational employer or the

exclusive representative may initiate fact-finding by submitting a written demand to the other party with a copy of the demand submitted simultaneously to the Board.

(2) Within 3 days following a party's demand for fact-finding, each party shall appoint one member of the fact-finding panel, unless the parties agree to proceed without a tri-partite panel. Following these appointments, if any, the parties shall select a qualified impartial individual to serve as the fact-finder and chairperson of the fact-finding panel, if applicable. An individual shall be considered qualified to serve as the fact-finder and chairperson of the fact-finding panel, if applicable, if he or she was not the same individual who was appointed as the mediator and if he or she satisfies the following requirements: membership in good standing with the National Academy of Arbitrators, Federal Mediation and Conciliation Service, or American Arbitration Association for a minimum of 10 years; membership on the mediation roster for the Illinois Labor Relations Board or Illinois Educational Labor Relations Board; issuance of at least 5 interest arbitration awards arising under the Illinois Public Labor Relations Act; and participation in impasse resolution processes arising under private or public sector collective bargaining statutes in other states. If the parties are unable to agree on a fact-finder, the parties shall request a panel of fact-finders who satisfy

the requirements set forth in this paragraph (2) from either the Federal Mediation and Conciliation Service or the American Arbitration Association and shall select a fact-finder from such panel in accordance with the procedures established by the organization providing the panel.

(3) The fact-finder shall have the following duties and powers:

(A) to require the parties to submit a statement of disputed issues and their positions regarding each issue either jointly or separately;

(B) to identify disputed issues that are economic in nature;

(C) to meet with the parties either separately or in executive sessions;

(D) to conduct hearings and regulate the time, place, course, and manner of the hearings;

(E) to request the Board to issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence;

(F) to administer oaths and affirmations;

(G) to examine witnesses and documents;

(H) to create a full and complete written record of the hearings;

(I) to attempt mediation or remand a disputed issue to the parties for further collective bargaining;

(J) to require the parties to submit final offers for each disputed issue either individually or as a package or as a combination of both; and

(K) to employ any other measures deemed appropriate to resolve the impasse.

(4) If the dispute is not settled within 75 days after the appointment of the fact-finding panel, the fact-finding panel shall issue a private report to the parties that contains advisory findings of fact and recommended terms of settlement for all disputed issues and that sets forth a rationale for each recommendation. The fact-finding panel, acting by a majority of its members, shall base its findings and recommendations upon the following criteria as applicable:

(A) the lawful authority of the employer;

(B) the federal and State statutes or local ordinances and resolutions applicable to the employer;

(C) prior collective bargaining agreements and the bargaining history between the parties;

(D) stipulations of the parties;

(E) the interests and welfare of the public and the students and families served by the employer;

(F) the employer's financial ability to fund the proposals based on existing available resources, provided that such ability is not predicated on an assumption that lines of credit or reserve funds are

available or that the employer may or will receive or develop new sources of revenue or increase existing sources of revenue;

(G) the impact of any economic adjustments on the employer's ability to pursue its educational mission;

(H) the present and future general economic conditions in the locality and State;

(I) a comparison of the wages, hours, and conditions of employment of the employees involved in the dispute with the wages, hours, and conditions of employment of employees performing similar services in public education in the 10 largest U.S. cities;

(J) the average consumer prices in urban areas for goods and services, which is commonly known as the cost of living;

(K) the overall compensation presently received by the employees involved in the dispute, including direct wage compensation; vacations, holidays, and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment and all other benefits received; and how each party's proposed compensation structure supports the educational goals of the district;

(L) changes in any of the circumstances listed in items (A) through (K) of this paragraph (4) during the

fact-finding proceedings;

(M) the effect that any term the parties are at impasse on has or may have on the overall educational environment, learning conditions, and working conditions with the school district; and

(N) the effect that any term the parties are at impasse on has or may have in promoting the public policy of this State.

(5) The fact-finding panel's recommended terms of settlement shall be deemed agreed upon by the parties as the final resolution of the disputed issues and incorporated into the collective bargaining agreement executed by the parties, unless either party tenders to the other party and the chairperson of the fact-finding panel a notice of rejection of the recommended terms of settlement with a rationale for the rejection, within 15 days after the date of issuance of the fact-finding panel's report. If either party submits a notice of rejection, the chairperson of the fact-finding panel shall publish the fact-finding panel's report and the notice of rejection for public information by delivering a copy to all newspapers of general circulation in the community with simultaneous written notice to the parties.

(b) If, after a period of bargaining of at least 60 days, a dispute or impasse exists between an educational employer whose territorial boundaries are coterminous with those of a city

having a population in excess of 500,000 and the exclusive bargaining representative over a subject or matter set forth in Section 4.5 of this Act, the parties shall submit the dispute or impasse to the dispute resolution procedure agreed to between the parties. The procedure shall provide for mediation of disputes by a rotating mediation panel and may, at the request of either party, include the issuance of advisory findings of fact and recommendations. A dispute or impasse over any Section 4.5 subject shall not be resolved through the procedures set forth in this Act, and the Board, mediator, or fact-finder has no jurisdiction over any Section 4.5 subject. The changes made to this subsection (b) by this amendatory Act of the 97th General Assembly are declarative of existing law.

(c) The costs of fact finding and mediation shall be shared equally between the employer and the exclusive bargaining agent, provided that, for purposes of mediation under this Act, if either party requests the use of mediation services from the Federal Mediation and Conciliation Service, the other party shall either join in such request or bear the additional cost of mediation services from another source. All other costs and expenses of complying with this Section must be borne by the party incurring them.

(c-5) If an educational employer or exclusive bargaining representative refuses to participate in mediation or fact finding when required by this Section, the refusal shall be deemed a refusal to bargain in good faith.

(d) Nothing in this Act prevents an employer and an exclusive bargaining representative from mutually submitting to final and binding impartial arbitration unresolved issues concerning the terms of a new collective bargaining agreement. (Source: P.A. 93-3, eff. 4-16-03.)

(115 ILCS 5/13) (from Ch. 48, par. 1713)

Sec. 13. Strikes.

(a) Notwithstanding the existence of any other provision in this Act or other law, educational employees employed in school districts organized under Article 34 of the School Code shall not engage in a strike at any time during the 18 month period that commences on the effective date of this amendatory Act of 1995. An educational employee employed in a school district organized under Article 34 of the School Code who participates in a strike in violation of this Section is subject to discipline by the employer. In addition, no educational employer organized under Article 34 of the School Code may pay or cause to be paid to an educational employee who participates in a strike in violation of this subsection any wages or other compensation for any period during which an educational employee participates in the strike, except for wages or compensation earned before participation in the strike. Notwithstanding the existence of any other provision in this Act or other law, during the 18-month period that strikes are prohibited under this subsection nothing in this subsection

shall be construed to require an educational employer to submit to a binding dispute resolution process.

(b) Notwithstanding the existence of any other provision in this Act or any other law, educational employees other than those employed in a school district organized under Article 34 of the School Code and, after the expiration of the 18 month period that commences on the effective date of this amendatory Act of 1995, educational employees in a school district organized under Article 34 of the School Code shall not engage in a strike except under the following conditions:

(1) they are represented by an exclusive bargaining representative;

(2) mediation has been used without success and, if an impasse has been declared under subsection (a-5) of Section 12 of this Act, at least 14 days have elapsed after the mediator has made public the final offers;

(2.5) if fact-finding was invoked pursuant to subsection (a-10) of Section 12 of this Act, at least 30 days have elapsed after a fact-finding report has been released for public information;

(2.10) for educational employees employed in a school district organized under Article 34 of the School Code, at least three-fourths of all bargaining unit members of the exclusive bargaining representative have affirmatively voted to authorize the strike;

(3) at least 10 days have elapsed after a notice of

intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional superintendent and the Illinois Educational Labor Relations Board;

(4) the collective bargaining agreement between the educational employer and educational employees, if any, has expired or been terminated; and

(5) the employer and the exclusive bargaining representative have not mutually submitted the unresolved issues to arbitration.

If, however, in the opinion of an employer the strike is or has become a clear and present danger to the health or safety of the public, the employer may initiate in the circuit court of the county in which such danger exists an action for relief which may include, but is not limited to, injunction. The court may grant appropriate relief upon the finding that such clear and present danger exists. An unfair practice or other evidence of lack of clean hands by the educational employer is a defense to such action. Except as provided for in this paragraph, the jurisdiction of the court under this Section is limited by the Labor Dispute Act.

(Source: P.A. 89-15, eff. 5-30-95; 90-548, eff. 1-1-98.)

(105 ILCS 5/34-85b rep.)

Section 15. The School Code is amended by repealing Section 34-85b.

Public Act 097-0008

SB0007 Enrolled

LRB097 06626 NHT 46711 b

Section 99. Effective date. This Act takes effect upon becoming law.